









**ENGLISH AND EMPIRE DIGEST**  
**WITH**  
**COMPLETE AND EXHAUSTIVE**  
**ANNOTATIONS.**

**VOLUME VI.**



# THE ENGLISH AND EMPIRE DIGEST

WITH  
COMPLETE AND EXHAUSTIVE  
ANNOTATIONS

BRING  
A COMPLETE DIGEST OF EVERY ENGLISH CASE REPORTED  
FROM EARLY TIMES TO THE PRESENT DAY, WITH ADDITIONAL  
CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE  
OF INDIA, AND THE DOMINIONS BEYOND THE SEAS,

AND INCLUDING  
COMPLETE AND EXHAUSTIVE ANNOTATIONS GIVING ALL THE  
SUBSEQUENT CASES IN WHICH JUDICIAL OPINIONS HAVE BEEN  
GIVEN CONCERNING THE ENGLISH CASES DIGESTED,

VOLUME VI.

*BILLS OF EXCHANGE, PROMISSORY NOTES  
AND NEGOTIABLE INSTRUMENTS.*

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**In this Volume English Cases reported up to 1st January, 1921, are included, and other cases are included so far as the Reports of the same were available in London on that date.**



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*See* SALE OF GOODS ; SHIPPING AND NAVIGATION.



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A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 ( <i>e.g.</i>	
A. Jur. Rep. ... ..	Australian Jurist Reports ... ..	Eng.
A. L. T. ... ..	Australian Law Times ... ..	Aus.
R. ... ..	Ontario Appeals ... ..	Aus.
	Acton's Reports, Prize Causes, 2 vols., 1809—1841 ... ..	Can.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842 ... ..	Eng.
	Adam's Justiciary Reports (Scotland), 1893—(current) ... ..	Scot.
	Addams' Ecclesiastical Reports, 3 vols., 1822—1826 ... ..	Eng.
	Agra High Court ... ..	Ind.
Agra F. B.	Agra High Court, Full Bench ... ..	Ind.
	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833 ... ..	Ir.
Alc. Reg. Cas. ... ..	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841 ... ..	Ir.
Aleyn ... ..	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649 ... ..	Eng.
All. ... ..	New Brunswick Reports (Allen) ... ..	Can.
Alta. L. R. ... ..	Alberta Law Reports ... ..	Can.
Amb. ... ..	Ambler's Reports, Chancery, 2 vols., 1725—1783 ... ..	Eng.
And. ... ..	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605 ... ..	Eng.
Andr. ... ..	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740 ... ..	Eng.
Anst. ... ..	Anstruther's Reports, Exchequer, 3 vols., 1792—1797 ... ..	Eng.
App. Cas. ... ..	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—	
	Appeal Court Reports ... ..	Eng.
App. Ct. Rep. ... ..	South African Law Reports, Appellate Division ... ..	N.Z.
App. D. ... ..	Argus Law Reports ... ..	S. Af.
Argus L. R. ... ..	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848 ... ..	Aus.
Arkley ... ..	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842 ... ..	Scot.
Arm. M. & O. ... ..	Arnold's Reports, Common Pleas, 2 vols., 1838—1839 ... ..	Ir.
Arn. ... ..	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841 ... ..	Eng.
Arn. & H. ... ..	Ashburner's Principles of Equity, 1902 ... ..	Eng.
Ashb. ... ..	Aspinall's Maritime Law Cases, 1870—(current) ... ..	Eng.
Asp. M. L. C. ... ..	Atkins' Reports, Chancery, 3 vols., 1736—1754 ... ..	Eng.
Atk. ... ..	Ayliffe's New Pandect of Roman Civil Law ... ..	Eng.
Ayl. Pan. ... ..	Ayliffe's Parergon Juris Canonici Anglicani ... ..	Eng.
Ayl. Par. ... ..		
B. ... ..	Barber's Gold Law ... ..	S. Af.
B. & Ad. ... ..	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834 ... ..	Eng.
B. & Ald. ... ..	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—	Eng.
B. & C. ... ..	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830 ... ..	Eng.
B. & C. R. (preceded by 1)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) ( <i>e.g.</i> , [1918—19] B. & C. R.) ... ..	Eng.
B. & ... ..	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870 ... ..	Eng.
B. ... ..	British Columbia Reports ... ..	Can.
B. L. ... ..	Bose's Digest ... ..	Ind.
B. L. R. A. C. ... ..	Bengal Law Reports ... ..	Ind.
B. L. R. P. C. ... ..	Bengal Law Reports, Appeal Cases ... ..	Ind.
B. I. R. Sup. Vol. ... ..	Bengal Law Reports, Privy Council ... ..	Ind.
B. V. C. C. ... ..	Bengal Law Reports, Supp. Vol. ... ..	Ind.
Bac Abr. ... ..	Butterworths' Workmen's Compensation Cases, 1907—(current) ... ..	Eng.
	Bacon's Abridgment ... ..	Eng.

Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872
Co. A. ...	Cook's Lower Canada Admiralty Court Cases ... ..
Co. Ent.	Coke's Entries ... ..
Co. Inst.	Coke's Institutes ... ..
Co. L. J.	Colonial Law Journal ... ..
Co. Litt....	Coke on Littleton (1 Inst.) ... ..
Co. Rep.	Coke's Reports, 13 parts, 1572—1616 ... ..
Cochran	... Nova Scotia Law Reports ... ..
Cockb. & Rowe	... Cockburn and Rowe's Election Cases, 1 vol., 1833 ... ..
Coll. ...	... Collyer's Reports, Chancery, 2 vols., 1844—1846 ... ..
Coll. Jurid.	... Collectanea Juridica, 2 vols. ... ..
Colles	... Colles' Cases in Parliament, 1 vol., 1697—1713 ... ..
Colt. ...	... Coltman's Registration Cases, 1 vol., 1879—1885 ... ..
Com. ...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740 ... ..
Com. Cas.	Commercial Cases, 1895—(current) ... ..
Com. Dig.	Comyns' Digest ... ..
Comb. ...	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698 ... ..
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843 ... ..
Cong. Dig.	Congdon's Digest ... ..
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834 ... ..
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747 ... ..
Cooke, Pr. Reg.	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742 ... ..
Coop. G. ...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815 ... ..
Coop. Pr. Cas. ...	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838 ... ..
Coop. temp. Brough.	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—
Coop. temp. Cott.	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases) ... ..
Cor. ...	Coryton's Reports ... ..
Corb. & D. ...	Corbett and Daniell's Election Cases, 1 vol., 1819 ... ..
Correspondances Jud.	Correspondances Judiciaires ... ..
Couper ...	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ... ..
Cout. ...	Coutlees' Unreported Cases ... ..
Cout. Dig. ...	Coutlees' Digest ... ..
Cowp. ...	Cowper's Reports, King's Bench, 2 vols., 1774—1778 ... ..
Cox & Atk. ...	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846 ... ..
Cox, C. C. ...	E. W. Cox's Criminal Law Cases, 1843—(current) ... ..
Cox, Eq. Cas. ...	S. C. Cox's Equity Cases, 2 vols., 1745—1797 ... ..
Cox, M. & H. ...	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852 ... ..
Cr. & J. ...	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832 ... ..
Cr. & M. ...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834 ... ..
Cr. & Ph. ...	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ... ..
Cr. App. Rep. ...	Cohen's Criminal Appeal Reports, 1908—(current) ... ..
Cr. M. & R. ...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835 ... ..
Craw. & D. ...	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846 ... ..
Craw. & D. Abr. C.	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838 ... ..
Cress. Insolv. Cas.	Cresswell's Insolvency Cases, 1 vol., 1827—1829 ... ..
Cripps' Church Cas.	Cripps' Church and Clergy Cases, 2 parts, 1847—1850 ... ..
Cro. Car. ...	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641 ... ..
Cro. Eliz. ...	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603 ... ..
Cro. Jac. ...	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625 ... ..
Cru. Dig. ...	Cruise's Digest of the Law of Real Property, 7 vols. ... ..
Cunn. ...	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735 ... ..
Curt. ...	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844 ... ..
D. ...	Duxbury's Reports of the High Court of the South African
D. C. A.	Dorion's Queen's Bench Reports ... ..
D. L. R. ...	Dominion Law Reports ... ..
Dalr. ...	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1808—1822 ... ..
Dan. ...	... Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823 ... ..
Dan. & Ll.	... Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ... ..

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Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844...	Eng.
Dav. Ir	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—...	Ir.
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816 ...	Eng.
Day	Day's Election Cases, 1 vol., 1892—1893 ...	Eng.
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857 ...	Eng.
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840 ...	Eng.
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835 ...	Eng.
Dears. & B.	Dearsley and Bell's Crown Cases Reserved, 1 vol., 1856—1858 ...	Eng.
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856 ...	Eng.
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832 ...	Scot.
G. ...	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848 ...	Eng.
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—...	Eng.
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865 ...	Eng.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols 1851—1857 ...	Eng.
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798 ...	Eng.
Dig.	Justinian's Digest or Pandects ...	Eng.
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol 1665—1677 ...	Scot.
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822 ...	Eng.
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837 ...	Eng.
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776 ...	Eng.
Doug. K. B.	Douglas' Reports, King's Bench, 4 vols., 1778—1785 ...	Eng.
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818 ...	Eng.
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832 ...	Eng.
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849 ...	Eng.
Dow. & Ry. K. B.	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—...	Eng.
Dow. & Ry. M. C.	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827 ...	Eng.
Dow. & Ry. N. P.	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822 ...	Eng.
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841 ...	Eng.
Dowl. N. S.	Dowling's Practice Reports, New Series, 2 vols., 1841—1843 ...	Eng.
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841 ...	Ir.
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843 ...	Ir.
Drew.	Draper's King's Bench Reports ...	Can.
Drew. & Sm.	Drewry's Reports, Chancery, 4 vols., 1852—1859 ...	Eng.
Drinkwater	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drury temp. Nap.	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Ir.
Drury temp. Sug.	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—1859 ...	Ir.
Dugd. Orig.	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—1844 ...	Ir.
Dunl. (Ct. of Sess.)	Dugdale's Origines Juridicales ...	Eng.
Dunning	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862 ...	Scot.
Durie	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Dyer	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642 ...	Scot.
E. & A.	Dyer's Reports, King's Bench, 3 vols., 1513—1581 ...	Eng.
E. & B.	Upper Canada Error and Appeal ...	Can.
E. & E.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—...	Eng.
E. B. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861 ...	Eng.
E. D. C.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860 ...	Eng.
E. D. L.	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. L. R.	South African Law Reports, Eastern Districts Local Division ...	S. Af.
E. R. (or Eng. Rep.)	Eastern Law Reporter ...	Can.
E. R.	English Reports ...	Can.
Eag. & Y.	Ontario Election Reports ...	Can.
East	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825 ...	Can.
	East's Reports, King's Bench, 16 vols., 1800—1812 ...	Can.



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East, P. O. ...	East's Pleas of the Crown ...
Ecc. & Ad. ...	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—
Eden ...	Eden's Reports, Chancery, 2 vols., 1757—1766 ...
Edgar ...	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725 ...
Edw. ...	Edwards' Reports, Admiralty, 1 vol., 1808—1812 ...
Elchies ...	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754 ...
Eng. Pr. Cas. ...	Roscoe's English Prize Cases, 2 vols., 1745—1858 ...
Eq. Cas. Abr. ...	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...
Eq. Rep. ...	Equity Reports, 3 vols., 1853—1855 ...
Esp. ...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810 ...
Ex. D. ...	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...
Exch. ...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856 ...
Exch. C. R. ...	Exchequer Court Reports ...
F. (Ct. of Sess.)	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906 ...
F. ...	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880 ...
F. N. D. ...	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867 ...
Fac. Coll. ...	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...
Falc. ...	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841 ...
Falc. & Fitz. ...	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751 ...
Fenton ...	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838 ...
Ferg. ...	Fenton, Important Judgments ...
Fitz. Nat. Brev. ...	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817 ...
Fitz-G. ...	Fitzherbert's Natura Brevium ...
Fl. & K. ...	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731 ...
Fonbl. ...	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842 ...
For. ...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...
Forb. ...	Forrest's Reports, Exchequer, 1 vol., 1800—1801 ...
Fort. De Laud. ...	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713 ...
Fortes. Rep. ...	Fortesque, De Laudibus Legum Angliæ ...
Fost. ...	Fortescue's Reports, fol., 1 vol., 1692—1736 ...
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Fox & S. Reg. ...	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825 ...
Fras. ...	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895 ...
Freem. Ch. ...	Fraser (Simon), Election Cases, 2 vols., 1793 ...
Freem. K. B. ...	Freeman's Reports, Chancery, 1 vol., 1660—1706 ...
G. ...	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704 ...
G. I. Dig. ...	Gregorowski's Reports of the High Court of the Orange Free State from 1883 ...
Gal. & Dav. ...	General Index Digest ...
Gale ...	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—
Gaz. L. R. ...	Gale's Reports, Exchequer, 2 vols., 1835—1836 ...
Geld. Dig. ...	New Zealand Gazette Law Reports ...
Gib. Cod. ...	Geldert's Digest ...
Giff. ...	Gibson's Codex Juris Ecclesiastici Anglicani ...
Gilb. ...	Giffard's Reports, Chancery, 5 vols., 1857—1865 ...
Gilb. C. P. ...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...
Gilb. Ch. ...	Gilbert's History and Practice of the Court of Common Pleas ...
Gilm. & F. ...	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726 ...
Gl. ...	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) ...
Glanv. ...	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828 ...
Glanv. El. ...	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...
Glascocock ...	Glanville's Election Cases, 1 vol., 1623—1624 ...
Godb. ...	Glascocock's Reports (Ireland), 1 vol., 1831—1832 ...
	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637 ...

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Gouldsb.	...	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	...	...	...	Eng.
Gow	...	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	...	...	...	Eng.
Gr.	...	Upper Canada Chancery (Grant)	...	...	...	Can.
Griffin's Patent Cases	...	Griffin's Patent Cases, 1884—1886	...	...	...	Eng.
Gwill.	...	Gwillim's Tithe Cases, 4 vols., 1224—1824	...	...	...	Eng.
H.	...	Hertzog's Reports of the High Court of the South African Republic, 1893	...	...	...	S. Af.
H. & C.	...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	...	...	...	Eng.
H. & N.	...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1850—1862	...	...	...	Eng.
H. & Tw.	...	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850	...	...	...	Eng.
H. & W.	...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	...	...	...	Eng.
H. B. R. (preceded by date)	...	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (c.g., [1915] H. B. R.)	...	...	...	Eng.
H. C.	...	Reports of the High Court of Griqualand West	...	...	...	S. Af.
H. E. C.	...	Hodgin's Election Reports	...	...	...	Can.
H. L. Cas.	...	Clark's Reports, House of Lords, 11 vols., 1847—1866	...	...	...	Eng.
Hag. Adm.	...	Haggard's Reports, Admiralty, 3 vols., 1822—1838	...	...	...	Eng.
Hag. Con.	...	Haggard's Consistorial Reports, 2 vols., 1789—1821	...	...	...	Eng.
Hag. Ecc.	...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	...	...	...	Eng.
Hailes	...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	...	...	...	Scot.
Hale, C. L.	...	Hale's Common Law	...	...	...	Eng.
Hale, P. C.	...	Hale's Pleas of the Crown, 2 vols.	...	...	...	Can.
Han.	...	New Brunswick Reports (Hannay)	...	...	...	Eng.
Har. & Ruth.	...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865	...	...	...	Eng.
Har. & W.	...	Harrison and Wollaston's Reports, King's Bench and Ball Court, 2 vols., 1835—1836	...	...	...	Eng.
	...	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	...	...	...	Scot.
Hard.	...	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	...	...	...	Eng.
Hare	...	Hare's Reports, Chancery, 11 vols., 1841—1853	...	...	...	Eng.
Hawk. P. C.	...	Hawkins's Pleas of the Crown, 2 vols.	...	...	...	Eng.
Hay	...	Hay's Reports	...	...	...	Ind.
Hayes	...	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832	...	...	...	Ir.
Hayes & Jo.	...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	...	...	...	Ir.
Hem. & M.	...	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	...	...	...	Eng.
Het.	...	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	Eng.
Hob.	...	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625	...	...	...	Eng.
Hodg.	...	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	...	...	...	Eng.
Hog.	...	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834	...	...	...	Ir.
Holt, Adm.	...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	...	...	...	Eng.
Holt, Eq.	...	W. Holt's Equity Reports, 2 vols., 1845	...	...	...	Eng.
Holt, K. B.	...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	...	...	...	Eng.
Holt, N. P.	...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	...	...	...	Eng.
Home, Ct. of Sess.	...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—	...	...	...	Scot.
Hong Kong L. R.	...	Hong Kong Reports	...	...	...	Hong Kong.
Hop. & Colt.	...	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	...	...	...	Eng.
Hop. & Ph.	...	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—	...	...	...	Eng.
Horn & H.	...	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—	...	...	...	Eng.
Hov. Supp.	...	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	...	...	...	Eng.
How. C.	...	Howard's Chancery Practice	...	...	...	Ir.
How. C. S.	...	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	...	...	...	Ir.
How. E. E.	...	Howard's Equity Exchequer	...	...	...	Ir.
How. P. L.	...	Howard on the Popery Laws	...	...	...	Ir.
Hud. & B.	...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	...	...	...	Ir.
Hume	...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	...	...	...	Scot.
	...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638	...	...	...	Eng.
H. Bl.	...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	...	...	...	Eng.
Hyde	...	Hyde's Reports	...	...	...	Ind.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

I. C. L. R.	...	Irish Common Law Reports, 17 vols., 1849—1866	...	Ir.
I. Ch. R.	...	Irish Chancery Reports, 17 vols., 1850—1867	...	Ir.
I. Eq. R.	...	Irish Equity Reports, 13 vols., 1838—1851	...	
I. L. R.	...	Irish Law Reports, 13 vols., 1838—1851	...	Ir.
I. L. R. (Vol.) All.	...	Indian Law Reports, Allahabad	...	Ind.
I. L. R. (Vol.) Bom.	...	Indian Law Reports, Bombay	...	Ind.
I. L. R. (Vol.) Calc.	...	Indian Law Reports, Calcutta	...	Ind.
I. L. R. (Vol.) Lah.	...	Indian Law Reports, Lahore	...	Ind.
I. L. R. (Vol.) Mad.	...	Indian Law Reports, Madras	...	Ind.
I. L. T.	...	Irish Law Times, 1867—(current)	...	Ir.
I. L. T. Jo.	...	Irish Law Times Journal, 1867—(current)	...	Ir.
I. R. (preceded by date)	...	Irish Reports, since 1893 ( <i>e.g.</i> [1894] 1 I. R.)	...	Ir.
I. R. (Vol.) O. L.	...	Irish Reports, Common Law, 11 vols., 1866—1877	...	Ir.
I. R. Eq.	...	Irish Reports, Equity, 11 vols., 1866—1877	...	Ir.
Ind. Awards	...	Industrial Awards Recommendations	...	N.Z.
Ind. Jur. N. S.	...	Indian Jurist, New Series	...	Ind.
Ind. Jur. O. S.	...	Indian Jurist, Old Series	...	Ind.
Ir. Cir. Rep.	...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	...	Ir.
Ir. Jur.	...	Irish Jurist, 18 vols., 1849—1866	...	Ir.
Ir. L. Rec. 1st ser.	...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	...	Ir.
Ir. L. Rec. N. S.	...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	...	Ir.
Ir. Term Rep.	...	Irish Term Reports	...	Ir.
Irv.	...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	...	Scot.
J. Bridg.	...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	...	Eng.
J. D. R.	...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	...	S. Af.
J. P.	...	Justice of the Peace, 1837—(current)	...	Eng.
J. P. Jo.	...	Justice of the Peace (Weekly Notes of Cases)	...	Eng.
J. R.	...	Jurist Reports	...	N.Z.
J. R. N. S.	...	Jurist Reports, New Series	...	N.Z.
J. Shaw, Just.	...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852	...	Scot.
Jac.	...	Jacob's Reports, Chancery, 1 vol., 1821—1823	...	Eng.
Jac. & W.	...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	...	Eng.
James	...	Nova Scotia Law Reports (James)	...	Can.
Jebb & B.	...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	...	Ir.
Jebb & S.	...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	...	Ir.
Jebb, C. C.	...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	...	Ir.
Jebb, Cr. & Pr. Cas.	...	Jebb's Crown and Presentment Cases	...	Ir.
Jenk.	...	Jenkins' Reports, 1 vol., 1220—1623	...	Eng.
Jo. & Car.	...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—	...	Ir.
Jo. & Lat.	...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols.,	...	Ir.
Jo. Ex. Ir.	...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	...	Ir.
John.	...	Johnson's Reports, Chancery, 1 vol., 1858—1860	...	Eng.
John. & H.	...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	...	Eng.
Jur.	...	Jurist Reports, 18 vols., 1837—1854	...	Eng.
Jur. N. S.	...	Jurist Reports, New Series, 12 vols., 1855—1867	...	Eng.
Just. Inst.	...	Justinian's Institutes	...	Eng.
K.	...	Kotze's Reports of the High Court of the Transvaal Province,	...	S. Af.
K. & G.	...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	...	Eng.
K. & J.	...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	...	Eng.
K. B. (preceded by date)	...	Law Reports, King's Bench Division, since 1900 ( <i>e.g.</i> , [1901] 2 K. B.)	...	Eng.
Kames, Dict. Dec.	...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	...	Scot.
Kames, Rem. Dec.	...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	...	Scot.
Kames, Sel. Dec.	...	Kames, Select Decisions, Court of Session (Scotland), 1 vol.,	...	Scot.
Kay	...	Kay's Reports, Chancery, 1 vol., 1853—1854	...	Eng.
Keb.	...	Keble's Reports, fol., 3 vols., 1661—1677	...	Eng.
Keen	...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	...	Eng.
	...	Kellwey's Reports, King's Bench, fol., 1 vol., 1327—1578	...	Eng.
	...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	...	Eng.
Kel. W.	...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	...	Eng.
Keny.	...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	...	Eng.
Keny. Ch.	...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—	...	Eng.



# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Kilkerran	New Brunswick Reports (Kerr) ...	Can.
Kn. & Omb.	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752 ...	Scot.
Knapp	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Konst. & W. Rat. App.	Knapp's Reports, Privy Council, 3 vols., 1829—1838 ...	Eng.
Konst. Rat. App.	Knox's Reports Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909 1912 ...	Aus.
L. & G. temp. Plunk.	Konstam's Reports of Rating Appeals, 2 vols., 1894—1904 ...	Eng.
L. & G. temp. Sugd.	Lloyd and Goold's Reports temp. Plunkett, Chancery (Ireland), 1 vol., 1834—1839 ...	Ir.
L. & Welsb.	Lloyd and Goold's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1835 ...	Ir.
L. C. & M. Gaz.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., ...	Eng.
L. C. J.	Local Courts and Municipal Gazette ...	Can.
L. C. L. J.	Lower Canada Jurist ...	Can.
L. C. R.	Lower Canada Law Journal ...	Can.
L. G. R.	Lower Canada Reports ...	Can.
L. J. Adm.	Local Government Reports, 1902—(current) ...	Eng.
L. J. Bcy.	Law Journal, Admiralty, 1865—1875 ...	Eng.
L. J. C. C.	Law Journal, Bankruptcy, 1832—1880 ...	Eng.
L. J. C. P.	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. Ch.	Law Journal, Common Pleas, 1831—1875 ...	Eng.
L. J. Eccl.	Law Journal, Chancery, 1831—(current) ...	Eng.
L. J. Ex.	Law Journal, Ecclesiastical Cases, 1866—1875 ...	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer, 1831—1875 ...	Eng.
L. J. K. B. or Q. B.	Law Journal, Exchequer in Equity, 1835—1841 ...	Eng.
L. J. M. C.	Law Journal, King's Bench or Queen's Bench, 1831—(current) ...	Eng.
L. J. N. C.	Law Journal, Magistrates' Cases, 1831—1896 ...	Eng.
L. J. O. S.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal) ...	Eng.
L. J. P.	Law Journal, Old Series, 10 vols., 1822—1831 ...	Eng.
L. J. P. & M.	Law Journal, Probate, Divorce and Admiralty, 1875—(current) ...	Eng.
L. J. P. C.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875 ...	Eng.
L. J. P. M. & A.	Law Journal, Privy Council, 1865—(current) ...	Eng.
L. Jo.	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865 ...	Eng.
L. L. R.	Law Journal Newspaper, 1866—(current) ...	Eng.
L. M. & P.	Law Journal Reports ...	S. Af.
L. N.	Leader Law Reports ...	Eng.
L. R. A. & E.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851 ...	Can.
L. R. C. C. R.	Legal News ...	Eng.
L. R. C. P.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—	Eng.
L. R. Eq.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. Exch.	Law Reports, Common Pleas, 10 vols., 1865—1875 ...	Eng.
L. R. H. L.	Law Reports, Equity Cases, 20 vols., 1865—1875 ...	Eng.
L. R. Ind. App.	Law Reports, Exchequer, 10 vols., 1865—1875 ...	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875 ...	Eng.
L. R. Ir.	Law Reports, Indian Appeals, Privy Council, 1873—(current) ...	Eng.
L. R. P. & D.	Law Reports, India Appeals, Privy Council, Supplementary Volume, 1872—1873 ...	Ir.
L. R. P. C.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893 ...	Eng.
L. R. Q. B.	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. Q. B.	Law Reports, Privy Council, 6 vols., 1865—1875 ...	Eng.
L. R. Sc. & Div.	Law Reports, Queen's Bench, 10 vols., 1865—1875 ...	Can.
L. T.	Quebec Reports, Queen's Bench ...	Eng.
L. T. Jo.	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875 ...	Eng.
L. T. O. S.	Law Times Reports, 1859—(current) ...	Eng.
Lane	Law Times Newspaper, 1843—(current) ...	Eng.
Lat.	Law Times Reports, Old Series, 34 vols., 1843—1860 ...	Can.
Laws. Reg. Cas.	La Themis ...	Eng.
Ld. Raym.	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611 ...	Eng.
& Ca.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Leach	Lawson's Registration Cases, 1895—(current) ...	Eng.
Lee	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732 ...	Eng.
Lee temp. Hard.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
	Leach's Crown Cases, 2 vols., 1730—1814 ...	Eng.
	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
	T. Lee's Cases temp. Hardwicke, King's Bench, 1 vol., 1733—1738 ...	Eng.

Leg. Rep.	Legal Reporter	...	...	...	...	...	Ir.
Legge	Legge's Reports	...	...	...	...	...	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer,	...	...	...	...	...	Eng.
	fol., 4 parts, 1552—1615	...	...	...	...	...	
	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols.,	...	...	...	...	...	Eng.
	1660—1696	...	...	...	...	...	Eng.
Lew. O. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	...	...	...	...	...	Eng.
	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	...	...	...	...	...	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	...	...	...	...	...	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	...	...	...	...	...	Eng.
	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	...	...	...	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	...	...	...	...	...	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	...	...	...	...	...	Eng.
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774	...	...	...	...	...	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol.,	...	...	...	...	...	Ir.
	1841—1842	...	...	...	...	...	Eng.
Lords Journals	Journals of the House of Lords	...	...	...	...	...	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	...	...	...	...	...	Eng.
Lumley, P. L. C.	Lumley's Poor Law Cases, 2 vols., 1834—1842	...	...	...	...	...	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	...	...	...	...	...	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols.,	...	...	...	...	...	Eng.
	1682—1704	...	...	...	...	...	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	...	...	...	...	...	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	...	...	...	...	...	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope,	...	...	...	...	...	S. Af.
	1828—1850	...	...	...	...	...	Eng.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	...	...	...	...	...	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	...	...	...	...	...	Can.
M. C. R.	Montreal Condensed Reports	...	...	...	...	...	Ind.
M. H. C. R.	Madras High Court Reports	...	...	...	...	...	Can.
M. L. R. (Vol.) K. B. or	Montreal Law Reports, King's Bench or Queen's Bench	...	...	...	...	...	Can.
Q. B.	Montreal Law Reports, Superior Court	...	...	...	...	...	Can.
M. L. R. (Vol.) S. Q.	Martin's Reports of Mining Cases	...	...	...	...	...	N.Z.
M. M. Cas.	Macassey's New Zealand Reports	...	...	...	...	...	Eng.
Mac.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	...	...	...	...	...	Eng.
Mac. & G.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	...	...	...	...	...	Eng.
Mac. & H.	M'Clelland's Reports, Exchequer, 1 vol., 1824	...	...	...	...	...	Eng.
M'Cle	M'Clelland and Younge's Reports, Exchequer, 1 vol., 1824—	...	...	...	...	...	Eng.
M'Cle. & Yo.	1825	...	...	...	...	...	Scot.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts,	...	...	...	...	...	Scot.
	1838—1839	...	...	...	...	...	Scot.
Macf. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol.,	...	...	...	...	...	Scot.
	1839	...	...	...	...	...	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols.,	...	...	...	...	...	Scot.
	1862—1873	...	...	...	...	...	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—	...	...	...	...	...	Scot.
	1865	...	...	...	...	...	Eng.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	...	...	...	...	...	Ind.
Mad.	Madras High Court Reports	...	...	...	...	...	Eng.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1821	...	...	...	...	...	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822	...	...	...	...	...	Eng.
	(Vol. VI. of Madd.)	...	...	...	...	...	Eng.
Madox	Madox's Formulæ Anglicanum	...	...	...	...	...	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	...	...	...	...	...	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London,	...	...	...	...	...	Eng.
	5 vols., 1848—1852	...	...	...	...	...	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—	...	...	...	...	...	Eng.
		...	...	...	...	...	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—	...	...	...	...	...	Eng.
		...	...	...	...	...	Eng.
Man. & Ry. M. C.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	...	...	...	...	...	Can.
Man. L. J.	Manitoba Law Journal	...	...	...	...	...	Can.
Man. L. R.	Manitoba Law Reports	...	...	...	...	...	Can.
Man. R. temp. Wood	Manitoba Reports temp. Wood	...	...	...	...	...	Eng.
Mans.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	...	...	...	...	...	Eng.
Nar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871	...	...	...	...	...	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol.,	...	...	...	...	...	Eng.
	1639—1642	...	...	...	...	...	Eng.
Marr.	Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	...	...	...	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	...	...	...	...	...	Eng.
Marsh.	Marshall's Reports	...	...	...	...	...	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year	...	...	...	...	...	
	Books of Edw. II., Year Books, Part I., 1273—1326	...	...	...	...	...	
	Megone's Companies Acts Cases, 2 vols., 1889—1891	...	...	...	...	...	

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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		Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	
		Merivale's Reports, Chancery, 3 vols., 1815—1817	S. Af.
Milw. ...		Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	Eng.
Mod. Rep.		Modern Reports, 12 vols., 1669—1755	Ir.
Mol. ...		Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831	Eng.
Mont. ...		Montagu's Reports, Bankruptcy, 1 vol., 1820—1832	Ir.
Mont. & A. ...		Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	
		Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	Eng.
Mont. & B.		Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840	Eng.
Mont. & Ch.		Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1820—	Eng.
Mont. & M.			
		Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	Eng.
Mont. D. & De G.			
		Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng.
Moo. & P. ...		Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	Eng.
Moo. & S. ...		Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng.
Moo. Ind. App. ...		Moore's Privy Council Cases, 15 vols., 1836—1863	Eng.
Moo. P. C. C. ...		Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng.
Moo. P. C. C. N. S.		Moody and Malkin's Reports, Nisi Prius, 1 vol., 1820—1830	Eng.
Mood. & M. ...		Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng.
Mood. & R. ...		Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng.
Mood. C. C. ...		J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827	Eng.
Moore, C. P. ...		Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	Eng.
Moore, K. B. ...		Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	Scot.
Mor. Dict. ...			
		Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	Eng.
Morr. ...		Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	
Mos. ...		Municipal Reports	Can.
Mun. Rep. ...		Murdoch's Epitome	Can.
Murd. Epit. ...		Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837	Eng.
Murp. & H. ...		Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot.
Murr. ...		Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841	Eng.
My. & Cr.		Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835	Eng.
My. & K.			
N. A. C. ...		Native Appeal Cases	S. Af.
N. & S. ...		Nichols and Stop's Reports (Tasmania)	Tasmania.
N. B. Dig. ...		New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep.		New Brunswick Equity Reports	Can.
N. B. R. ...		New Brunswick Reports	Can.
N. B. R. (All.)		New Brunswick Law Reports (Allen)	Can.
N. B. R. (Ber.)		New Brunswick Law Reports (Berton)	Can.
N. B. R. (Chip.)		New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.)		New Brunswick Reports (Hannay)	Can.
N. B. R. (Kerr)		New Brunswick Law Reports (Kerr)	Can.
N. B. R. (P. & B.)		New Brunswick Reports (Pugsley and Burbidge)	Can.
N. B. R. (P. & T.)		New Brunswick Law Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.)		New Brunswick Reports (Pugsley)	Can.
N. L. R. ...		Natal Law Reports	S. Af.
N. S. R. ...		Nova Scotia Reports	Can.
N. S. R. (James)		Nova Scotia Reports (James)	Can.
N. S. R. (Old.)		Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.)		Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G.)		Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.)		Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad.		New South Wales Reports, Admiralty	Aus.
N. S. W. B. ...		New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas.		New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq. ...		New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtrn. Cas.		New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R.		New South Wales Law Reports	Aus.
N. S. W. Land App. Cts.		New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R.		New South Wales Supreme Court Reports	Aus.
N. S. W. S. C. R. N. S.		New South Wales Supreme Court Reports, New Series	Aus.
N. S. W. W. N.		New South Wales Weekly Notes	Aus.
		North-Western Provinces High Court Reports	Ind.
N. W. T. R. ...		North-West Territories Reports	Can.
N. Z. Jur. ...		New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law		New Zealand Jurist Mining Law	N.Z.
N. Z. Jur. N. S.		New Zealand Jurist, New Series	N.Z.
. Z. L. R. ...		New Zealand Law Reports, 1883—(current)	N.Z.
L. R. C. A.		New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
		Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.



# xxiv      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Nev. & M. K. B.	Neville and Manning's Reports, King's Bench, 6 vols., 1832—1836 ...	Eng.
Nev. & M. M. C.	Neville and Manning's Magistrates' Cases, 3 vols., 1832—1836 ...	Eng.
Nev. & P. K. B.	Neville and Perry's Reports, King's Bench, 8 vols., 1836—1838 ...	Eng.
Nev. & P. M. C.	Neville and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng.
New Mag. Cas.	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850 ...	Eng.
New Pract. Cas.	New Practice Cases (Bittleston and others), 3 vols., 1844—1848 ...	Eng.
New Rep. ...	New Reports, 6 vols., 1862—1865 ...	Eng.
New Sess. Cas. ...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 ...	Eng.
Nfld. L. R.	Newfoundland Reports ...	Nfld.
Nolan ...	Nolan's Magistrates' Cases, 1 vol., 1791—1793 ...	Eng.
Notes of Cases ...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols ...	Eng.
Noy ...	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O B. & F. ...	Ollivier Bell and Fitzgerald's Reports ...	N.Z.
O. B. S. P. ...	Old Bailey Session Papers ...	Eng.
O. Bridg. ...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666 ...	Eng.
O. L. R.	Reports of the High Court of the Orange Free State, 1879—1883 ...	S. Af.
O'M. & H.	Ontario Law Reports ...	Can.
O. P. D.	O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. R.	South African Law Reports, Orange Free State Provincial Division ...	S. Af.
O. R.	Ontario Reports ...	Can.
O. R. C.	Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. S.	Reports of the High Court of the Orange River Colony ...	S. Af.
O. W. N.	Upper Canada Queen's Bench, Old Series ...	Can.
O. W. R.	Ontario Weekly Notes ...	Can.
Old.	Ontario Weekly Reporter ...	Can.
Ont. Dig.	Nova Scotia Reports (Oldrights) ...	Can.
Owen ...	Digest of Ontario Case Law, 4 vols., 1823—1900 ...	Can.
	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1614—1614 ...	Eng.
P. (preceded by date) ...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 ( <i>e.g.</i> , [1891] P.) ...	Eng.
P. & B. ...	New Brunswick Reports (Pugsley and Burbidge) ...	Can.
P. & T. ...	New Brunswick Law Reports (Pugsley and Trueman) ...	Can.
P. D. ...	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890 ...	Eng.
P. E. I. ...	Prince Edward Island Reports ...	Can.
P. R. ...	Ontario Practice ...	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735 ...	Eng.
Park. ...	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
Pat. App.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767 ...	Eng.
Pater. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822 ...	Scot.
Peake ...	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873 ...	Scot.
Peake, Add. Cas.	Peake's Reports, Nisi Prius, 1 vol., 1790—1794 ...	Eng.
Peck. ...	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
Pelham ...	Peckwell's Election Cases, 2 vols., 1803—1806 ...	Eng.
Per. & Dav.	Pelham (S. A.) Reports ...	Aus.
Per. & Kn.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841 ...	Eng.
Per. O. S.	Perry and Knapp's Election Cases, 1 vol., 1833 ...	Eng.
Per. P.	Perrault's Conseil Supérieur ...	Can.
Ph.	Perrault's Prévosté de Quebec, 1726—1756 ...	Can.
Phil. El. Cas.	Phillips' Reports, Chancery, 2 vols., 1841—1849 ...	Eng.
Phillim.	Phillips' Election Cases, 1 vol., 1780 ...	Eng.
Phillim. Eccl. Jud.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phip.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875 ...	Eng.
Pig. & R.	Phipson's Digest of Natal Reports, 1858—1859 ...	S. Af.
Pitc.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Plowd.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I. ...	Eng.
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856 ...	Eng.
Preo. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722 ...	Eng.
Price ...	Price's Reports, Exchequer, 13 vols., 1814—1824 ...	Eng.
Price ...	Price's Mining Commissioners' Cases ...	Can.

# REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Abb.	Full Title	Country
Py. R.	New Brunswick Reports Pykes' Lower Canada Reports	Can. Can.
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (e.g., [1891] 1 Q. B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	Eng.
J. P.	Queensland Justice of Peace Reports	Aus.
L. J.	Queensland Law Journal	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. O.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. O. R.	Queensland Supreme Court Reports	Aus.
S. R.	Queensland State Reports	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	S. Af.
(Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesney)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. O.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas.	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Ir.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Ir.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. temp. H.	Ridgeway's Reports temp. Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	Eng.
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	Eng.
U. d. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
U. d. Cas.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
U. d. Cas. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	Eng.
U. d. Cas. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
V. d. E. R.	Russell's Election Reports	Can.
V. d. & Can. Cas.	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
V. d. & Can. Tr. Cas.	Railway and Canal Traffic Cases, 1855—(current)	Eng.
V. d. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826	Eng.
V. d.		



# xxvi      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

Ryde & K. Rat. App	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904 ...	Eng.
Ryde, Rat. App.	Ryde's Rating Appeals, 3 vols., 1871—1893 ...	Eng.
	Searle's Reports of the Supreme Court of the Cape of Good Hope ...	S. Af.
S. A. L. J.	South African Law Journal ...	S. Af.
S. A. L. R.	South Australian Law Reports ...	Aus.
S. A. L. R.	South African Law Reports ...	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—	S. Af.
S. C. ...	Reports of the Supreme Court of the Cape of Good Hope from	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C.)	Scot
S. C. (H. L.) (preceded by date).	Court of Session Cases (Scotland) (House of Lords), since 1906 ( <i>e.g.</i> , [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date).	Court of Justiciary Cases (Scotland), since 1906 ( <i>e.g.</i> , [1906] S. C.	Scot.
S. C. R. ...	Canada, Supreme Court Reports ...	Can.
S. L. T. ...	Scots Law Times, 1893 (current) ...	Scot.
S. Q. R.	Queensland State Reports ...	Aus.
S. R. ...	Reports of the High Court of Southern Rhodesia ...	S. Af.
S. R. C. ...	Stuart's Lower Canada Reports ...	Can.
S. R. N. S. W. ...	New South Wales, State Reports ...	Aus.
S. R. Q.	Queensland Reports, Supreme Court ...	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports ...	Can
Saint ...	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk. ...	Salkeld's Reports, King's Bench, 3 vols., 1689—1712 ...	Eng.
Sask. L. R.	Saskatchewan Law Reports ...	Can.
Sau. & Sc.	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840 ...	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904 ...	Eng.
Saund. B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund. C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund. M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols.,	Eng.
Sav. ...	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say. ...	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur. ...	Scottish Jurist, 46 vols., 1829—1873 ...	Scot.
Sc. L. R.	Scottish Law Reporter, 1865—(current) ...	Scot.
Sc. R. R.	Scots Revised Reports ...	Scot.
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806 ...	Ir.
Scott ...	Scott's Reports, Common Pleas, 8 vols., 1834—1840 ...	Eng.
Scott, N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860 ...	Eng.
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.) ...	Eng.
Sess. Cas. K. B.	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	Eng.
Sh. (Ct. of Sess.)	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—	Scot.
Sh. & MacL.	v and Maclean's Scotch Appeals, House of Lords, 3 vols., 1822—1838 ...	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868 ...	Scot.
Sh. Just.	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831 ...	Scot.
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch.	Sheppard's Touchstone of Common Assurances ...	Eng.
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695 ...	Eng.
Show. Parl. Cas.	Shower's Cases in Parliament, fol., 1 vol., 1694—1699 ...	—
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670 ...	En
Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852 ...	En
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826 ...	En
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852 ...	—
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697 ...	En
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825 ...	I
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857 ...	En
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806 ...	—
Smith, L. C.	Smith's Leading Cases, 2 vols. ...	—

Smith, Reg. Cas. ...	C. L. Smith's Registration Cases, 1895—(current) ...	
Smythe ...	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840 ...	Ir.
Sol. Jo. ...	Solicitors' Journal, 1856—(current) ...	Eng.
Spence ...	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks ...	Spinks' Prize Court Cases, 2 parts, 1854—1856 ...	Eng.
St. R. Qd. (preceded by	Queensland State Reports, since 1902 ( <i>e.g.</i> , [1902] St. R. Qd.) ...	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681 ...	Scot.
Stark. ...	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823 ...	
State Tr.	State Trials, 34 vols., 1163—1820 ...	
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858 ...	Eng.
Stewart ...	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ...	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest ...	Can.
Story ...	Story's Commentaries on Equity Jurisprudence ...	Eng.
Stra. ...	Strange's Reports, 2 vols., 1716—1747 ...	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—	Scot.
	Sessions Cases (Stuart) ...	Scot.
Stuart, Adm. ...	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859	Can.
Stuart, K. B. ...	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835 ...	Can.
Sw. ...	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw. & Tr.	Swabey's Reports, Admiralty, 1 vol., 1855—1859 ...	Eng.
	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865 ...	Eng.
Swan. ...	Swanston's Reports, Chancery, 3 vols., 1818—1821 ...	
Swin. ...	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme ...	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M. ...	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851 ...	Eng.
T. H. ...	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909 ...	S. Af.
T. Jo. ...	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685 ...	Eng.
T. L. ...	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current) ...	S. Af.
T. L. R.	The Times Law Reports, 1884—(current) ...	Eng.
T. P. ...	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law reports, Transvaal Provincial Division ...	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—	Eng.
T. S. ...	Reports of the Supreme Court of the Transvaal, 1902—1909	S. Af.
Taml. ...	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830 ...	Eng.
Tas. L. R.	Tasmanian Law Reports ...	Aus.
Taunt. ...	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas.	Tax Cases, 1875—(current) ...	Eng.
Tay. ...	Taylor's King's Bench Reports ...	Can.
Temp. Wood	Manitoba Reports <i>temp.</i> Wood ...	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800	Eng.
Terr. L. R.	Territories Law Reports ...	Can.
Thom. ...	Nova Scotia Reports (Thomson) ...	Can.
Toth. ...	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town. St. Tr. ...	Townsend, Modern State Trials ...	Eng.
Trist. ...	Tristram's Consistory Judgments, 1 vol., 1872—1890 ...	Eng.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. C. Real. Prop.	Tudor's Leading Cases on Real Property ...	Eng.
Turn. & R. ...	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr. ...	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835 ...	Eng.
Tyr. & Gr. ...	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur. ...	Upper Canada Jurist ...	Can.
U. C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current) ...	Can.
U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
U. C. R. ...	Upper Canada Reports, Queen's Bench ...	Can.
Udal ...	Fiji Law Reports (Udal) ...	Fiji.
V. L. R. ...	Victorian Law Reports ...	Aus.
V. R. ...	Victorian Reports ...	Aus.
V. R. (Adm.) ...	Victorian Reports (Admiralty) ...	Aus.
V. R. (Eq.)	Victorian Reports (Equity) ...	Aus.
	Victorian Reports (Law) ...	Aus.

# xxviii      REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

Vaugh. ...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673 ...	Eng.
Vent. ...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691 ...	
Vern. ...	Vernon's Reports, Chancery, 2 vols., 1680—1719 ...	
Vern. & Scr. ...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788 ...	
Ves. ...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817 ...	
Ves. & B. ...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814 ...	Eng.
Ves. Sen. ...	Vesey Sen.'s Reports, 2 vols., 1747—1756 ...	Eng.
Vin. Abr. ...	Viner's Abridgment of Law and Equity, fol., 22 vols. ...	Eng.
Vin. Supp. ...	Supplement to Viner's Abridgment of Law and Equity, 6 vols. ...	Eng.
W. ...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857 ...	S. Af.
W. A. L. R. ...	West Australian Law Reports ...	Aus.
W. A'B. & W. ...	Webb, A'Beckett and Williams' Victorian Reports ...	Aus.
W. & W. ...	Wyatt and Webb ...	Aus.
W. C. O. ...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., ...	Eng.
W. H. C. ...	South African Law Reports, Witwatersrand High Court ...	S. Af.
W. Jo. ...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol 1 vol., 1620—1640 ...	Eng.
W. L. D. ...	South African Law Reports, Witwatersrand Local Division ...	S. Af.
W. L. R. ...	Western Law Reporter ...	Can.
W. L. T. ...	Western Law Times ...	Can.
W. N. (preceded by date)	Law Reports, Weekly notes, 1866—(current) ( <i>e.g.</i> , [1866] W. N.)	Eng.
W. N. ...	Calcutta Weekly Notes ...	
W. R. ...	Weekly Reporter, 54 vols., 1852—1906 ...	Eng.
W. R. ...	Sutherland's Weekly Reporter ...	Ind.
W. R. ...	Weekly Reporter, reporting cases in the Cape Provincial Division ...	S. Af.
W. W. & A'B. ...	Wyatt, Webb and A'Beckett ...	Aus.
W. W. R. ...	Western Weekly Reports ...	Can.
Wallis ...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791 ...	Ir.
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855 ...	
Welsh, Reg. Cas.	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840 ...	Ir.
Went. Off. Ex.	Wentworth's Office and Duty of Executors ...	Eng.
West ...	West's Reports, House of Lords, 1 vol., 1839—1841 ...	Eng.
West temp. Hard.	West's Reports temp. Hardwicke, Chancery, 1 vol., 1736—1740 ...	Eng.
West. Tithe Cas.	Western's London Tithe Cases, 1 vol., 1592—1822 ...	Eng.
White ...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893 ...	Scot.
White & Tud. L. C.	White and Tudor's Leading Cases in Equity, 2 vols. ...	Eng.
Wight. ...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811 ...	Eng.
Will. Woll. & Dav.	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837 ...	Eng.
Will. Woll. & H.	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839 ...	Eng.
Willes ...	Willes' Reports, Common Pleas, 1 vol., 1737—1758 ...	Eng.
Wilm. ...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770 ...	Eng.
Wils. ...	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774 ...	Eng.
Wils & S. ...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., ...	Scot.
Wils. Ch. ...	J. Wilson's Reports, Chancery, 2 vols., 1818—1819 ...	Eng.
Wils. Ex. ...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817 ...	Eng.
Win. ...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625 ...	Eng.
Wm. Bl. ...	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779 ...	Eng.
Wm. Rob. ...	William Robinson's Reports, Admiralty, 3 vols., 1838—1850 ...	Eng.
Wms. Saund. ...	Williams' Notes to Saunders' Reports, 2 vols. ...	Eng.
Wolf. & B. ...	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864 ...	Eng.
Wolf. & D. ...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858 ...	Eng.
Woll. ...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841 ...	Eng.
Wood ...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798 ...	Eng.
Y. A. D. ...	Young's Vice-Admiralty Reports ...	Can.
Y. & C. Ch. Cas.	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841- ...	Eng.
Y. & O. Ex. ...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841 ...	Eng.
Y. & J. ...	Younge and Jarvis' Reports, Exchequer, 3 vols., 1826—1830 ...	Eng.
	Year Books ...	Eng.
	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613 ...	Eng.
You. ...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832 ...	Eng.

## ABBREVIATIONS

### USED IN THIS WORK.

(For Abbreviations used in citing Reports, see pp. xlii.—xxviii., *ante*.)

A.-G.	.	.	.	.	for Attorney-General.
Act.	.	.	.	.	„ Actiengesellschaft.
Admlty.	.	.	.	.	„ Admiralty.
Affd.	.	.	.	.	„ Affirmed.
Affg.	.	.	.	.	„ Affirming
Akt.	.	.	.	.	„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.	.	.	.	.	Anonymous.
Apld.	.	.	.	.	Applied.
Appct.	.	.	.	.	Applicant.
Appln.	.	.	.	.	„ Application.
Appln.	.	.	.	.	Application to Register a Trade Mark.
Applt.	.	.	.	.	„ Appellant.
Apprvd.	.	.	.	.	„ Approved.
Arbn.	.	.	.	.	„ Arbitration.
Archbp.	.	.	.	.	„ Archbishop.
Art.	.	.	.	.	„ Article.
Assce.	.	.	.	.	„ Assurance.
Assocn.	.	.	.	.	„ Association.
B. C.	.	.	.	.	„ Borough Council.
Bkpcy.	.	.	.	.	„ Bankruptcy.
Bkpt.	.	.	.	.	„ Bankrupt.
Bldg. Soc.	.	.	.	.	„ Building Society.
Bp.	.	.	.	.	„ Bishop.
C. A.	.	.	.	.	„ Court of Appeal.
C. & S. L. Ry. Co.	.	.	.	.	„ City & South London Railway Co.
C. C. A.	.	.	.	.	„ Court of Criminal Appeal.
C. C. R.	.	.	.	.	„ County Court Rules.
C. C. R.	.	.	.	.	„ Court of Crown Cases Reserved.
C. L. P. Act	.	.	.	.	„ Common Law Procedure Act.
C. L. Ry. Co.	.	.	.	.	„ Central London Railway Co.
C. S. U. C.	.	.	.	.	„ Consolidated Statutes of Upper Canada.
Cale. Ry. Co.	.	.	.	.	„ Caledonian Railway Co.
Ct.	.	.	.	.	„ Court.
Ct. of Eq.	.	.	.	.	„ Court of Equity.
Ct. of R.	.	.	.	.	„ Court of Review.
Co.	.	.	.	.	„ Company.
Co-op. Assocn.	.	.	.	.	„ Co-operative Supply Association.
Comrs.	.	.	.	.	„ Commissioners.
Consd.	.	.	.	.	„ Considered.
Corpn.	.	.	.	.	„ Corporation.
D. C.	.	.	.	.	„ Divisional Court.
Dbtd.	.	.	.	.	„ Doubted.
Deft.	.	.	.	.	„ Defendant.
Distd.	.	.	.	.	„ Distinguished.
Ecccl Comrs.	.	.	.	.	„ Ecclesiastical Commissioners.
Ecccl. Ct.	.	.	.	.	„ Ecclesiastical Court.



## ABBREVIATIONS.

Ex. Ch.	for Exchequer Chamber.
<i>Ex p.</i>	„ <i>Ex parte.</i>
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Folld.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co.	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grdms.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insee.	„ Insurance.
	„ Justices.
Jud. Act	„ Judicature Act.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L.C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L.J.	„ Lord Justice.
L.JJ.	„ Lords Justices.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ Nisi Prius.
O.	„ Order.
O. H.	„ Outer House.
Overd.	„ Overruled.
P. C.	„ Privy Council.
Petn.	„ Petition or Election Petition.
Pltf.	„ Plaintiff.
R. C.	„ Rural Council.
R. D. C.	„ Rural District Council.
R. S. A.	„ Rural Sanitary Authority.
R. S. O.	„ Revised Statutes of Canada.

## ABBREVIATIONS.

xxxi

R. S. C.	for Rules of the Supreme Court, 1883.
Refd.	„ Referred.
Regn. of Trade Mk.	Registration of Trade Mark.
Regr. of Trade Mks	Registrar of Trade Marks.
Resp.	Respondent.
Restg.	„ Restoring.
Revsd.	Reversed.
Revsg.	Reversing.
Ry. Co.	„ Rail. Co. or Railway Co.
S. C.	Same Case.
S. C. (name of colony following)	Supreme Court of a Colony.
S. E.	Settled Estates.
S. E. & C. Ry. Co.	South Eastern & Chatham Railway Co
S. E. Ry. Co.	South Eastern Railway Co.
S. P.	„ Same Point.
S.S. Co.	Steamship Co.
Sect.	Section.
Set. Land Act	Settled Land Act.
Settlmt.	Settlement.
Soc.	Society.
Soc. Anon.	Société Anonyme, etc.
Solr.	Solicitor.
Trade Mk.	„ Trade Mark.
Tram. Co.	Tramways Company.
U. C.	Urban Council.
U. D. C.	Urban District Council.
U. S. A.	United States of America.
Union Assmt. Com	Union Assessment Committee.
Urban S. A.	„ Urban Sanitary Authority.
V. A. C.	„ Vice-Admiralty Court.
V.-C.	Vice-Chancellor.



## MEANING OF TERMS

### USED IN CLASSIFYING ANNOTATING CASES.

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THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases are listed chronologically except such as are classified as " Referred to " or " Mentioned." These come at the end and are arranged *inter se* in chronological order. The terms used in classifying the annotating cases are as follows :—

- " APPLIED " (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- " APPROVED " (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- " CONSIDERED " (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- " DISTINGUISHED " (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- " DOUBTED " (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- " EXPLAINED " (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- " EXTENDED " (Extd.).—Compare " APPLIED," *supra*.
- " FOLLOWED " (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- " NOT FOLLOWED " (N.F.).—Compare " FOLLOWED," *supra*, to which it is the adverse.
- " OVERRULED " (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- " REFERRED " (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- " MENTIONED " (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.





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<i>Bankers and their position as to Cheques and Negotiable Instruments</i>	See BANKERS AND BANKING.	<i>Forgery in connection with Negotiable Instruments.</i>	See CRIMINAL LAW AND PROCEDURE.
<i>Bank Notes</i>	„ BANKERS AND BANKING.	<i>Marketable Security</i>	„ STOCK EXCHANGE.
<i>Cheques</i>	„ BANKERS AND BANKING.	<i>Payment by Negotiable Instrument</i>	„ CONTRACT; MONEY AND MONEY LENDING.
<i>Execution of Negotiable Instruments by Companies and Corporations</i>	AGENCY; COMPANIES; CORPORATIONS.	<i>Proof in Bankruptcy by Holder of Negotiable Instrument</i>	BANKRUPTCY AND INSOLVENCY.
		<i>Set-off in Actions on Negotiable Instruments</i>	SET-OFF AND COUNTERCLAIM.

NOTE.—The Act now in force in England is *Bills of Exchange Act, 1882 (c. 61)*, as amended by *Bills of Exchange (Crossed Cheques) Act, 1906 (c. 17)*, & *Bills of Exchange (Time of Noting) Act, 1917 (c. 48)*, herein referred to as *1882 Act, 1906 Act, & 1917 Act* respectively. In considering the cases set out in this title regard must be had to their date & the effect of the codifying Act of 1882.

## Part I.—In General.

### SECT. 1. NATURE OF NEGOTIABLE INSTRUMENTS.

1. **Bill of exchange—Simple contract.]**—A bill of exchange is only a simple contract.—*YEOMAN v. BRADSHAW* (1696), 12 Mod. Rep. 107; Carth. 373; 3 Salk. 70; Comb. 392; Holt, K. B. 42; 88 E. R. 1198.

*Annotations.*—*Reid. Stokes v. Bate* (1826), 5 B. & C. 491; *A.-G. v. Bouwens* (1838), 7 L. J. Ex. 297; *Mondel v. Steel* (1841), 11 L. J. Ex. 91. *Mentd. Griffith v. Griffith* (1753), Bay. 83.

2. **Order on third person—Not express promise.]**—A bill of exchange is only an order on a third person to pay, & no express promise at all (PAGE, J.).—*DUTTON v. STAPLES* (1730), 1 Barn. K. B. 340; 94 E. R. 229.

3. **Whether proper subject for mortgage.]**—*Bills of exchange are not proper subjects of mtge.*—*HILLS v. PARKER* (1866), 14 L. T. 107, H. L.

4. **Subject to Statute of Limitations.]**—Stat. Limitations extends to bills of exchange.—

*CHIEVELY v. BOND* (1692), 4 Mod. Rep. 105; 87 E. R. 288; *sub nom. CHEEVELY v. BOND*, 1 Show. 341; Holt, K. B. 427; *sub nom. CHEVELY v. BOND*, Carth. 228.

—*Mentd. Skirme v. Meyrick* (1739), 2 Com. 700.

5. **Cheque—Is an order—Whether funds in drawee's hands or not.]**—A cheque is an order, whether there are funds in the hands of the drawee or not.—*R. v. CARTER* (1845), 1 Den. 65; 9 J. P. 775.

*Annotations.*—*Reid. R. v. Hewitt* (1848), 13 J. P. 23; *R. v. Dawson* (1851), 15 J. P. 81, C. C. R.

—The doctrine that a cheque is not an order, unless there are funds in the hands of the drawee, has long been overruled (CRESSWELL, J.).—*R. v. DAWSON* (1851), 2 Den. 75; T. & M. 428; 4 New Sess. Cas. 569; 20 L. J. M. C. 102; 15 J. P. 81; 15 Jur. 159, C. C. R.

*Annotation.*—*Mentd. R. v. Snelling* (1853), Dears. C. C. C. C. R.

### PART I. SECT. 1.

[A cheque is not a chose in action.]

—A cheque is not the subject of

chose in action & is mortis causa.

*Re BERNARD* (1911), 18 O. W. R. ; 2 O. W. N. 716.—CAN.



# 10 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—General nature of negotiable instruments.*  
*Sect. 2.]*

7. — **Not an equitable assignment of drawer's bank balance.]**—A cheque is not an equitable assignment of the drawer's balance at his bankers.—*HOPKINSON v. FORSTER* (1874), L. R. 19 Eq. 74; 23 W. R. 301.

*Annotations:—**Appld. Schroeder v. Central Bank of London* (1876), 34 L. T. 735. *Re Beaumont, Beaumont v. Ewbank*, [1902] 1 Ch. 889.

8. — **Commercial interpretation of.]**—The word "cheque" has received a commercial interpretation, confining it to cheques on bankers, which are, in fact, payable on demand, but which by usage are never expressed to be payable on demand at all. A cheque is a simple order for the payment of money, & no time being mentioned, is an order for payment of money immediately (*POLLOCK, C.B.*).—*HUNTER v. BOWYER* (1850), 15 L. T. O. S. 281.

9. — **Distinguished from inland or foreign bill.]**—A cheque does not require acceptance. In the ordinary course it is never accepted. It is not intended for circulation; it is given for immediate payment. It is not entitled to days of grace; & though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker; & in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay to his orders his debt to be paid at a particular place, & as being much in the same position as the maker of a promissory note or the acceptor of a bill of exchange, payable at a particular place, & not elsewhere, who has no right to insist on immediate presentment at that place. The case of a cheque is not similar to that of regular bills of exchange, inland or foreign, drawn payable at or after date.—*RAMCHURN MULLICK v. LUCH-MEECHUND RADAKISSEN* (1854), 9 Moo. P. C. C. 46; 14 E. R. 215, P. C.; *sub nom. RADAKISSEN & DOSS v. RAMCHURN MULLICK*, 2 C. L. R. 1664; *sub nom. MULLICK v. RADAKISSEN*, 23 L. T. O. S. 25.

*Annotations:—**Mentd. Goodwyn v. Chevalley* (1859), 4 H. & N. 631; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526.

10. — **Is a negotiable instrument.]**—A cheque on a banker, payable to bearer, is a negotiable instrument, & passes by indorsement, so as to entitle a holder to sue the indorser thereon, as in the case of a bill of exchange.—*KEENE v. BEARD* (1860), 8 C. B. N. S. 372; 29 L. J. O. P. 287; 2 L. T. 240; 6 Jur. N. S. 1248; 8 W. R. 469; 141 E. R. 1210.

*Approved. M'Lean v. Clydesdale Banking Co.*

confers no right of action in equity as upon an equitable assignment.—*CALDWELL v. MERCHANTS BANK OF CANADA* (1876), 36 C. P. 794.—*CAN.*

10 i. — **Is a negotiable instrument.]**—A bank cheque is a negotiable instrument, & passes by indorsement, so that an indorser is liable for the contents to the holder.—*MACDONALD v. UNION BANK OF SCOTLAND & RANKIN* (1864), 36 Sc. Jur. 477; 3 Macph. (Ct. of Sess.) 963.—*SCOT.*

10 ii. — **Is a negotiable instrument.]**—A banker's cheque in favour of A. B. or order, or

bearer" is a negotiable document which will pass without indorsement.—*BATZ v. HEYWOOD* (1882), 2 E. D. C. 153.—*S. AF.*

12 i. — **Is a bill of exchange.]**—When drawn on private bank.—An instrument in the form of a cheque, when drawn on a private bank, is not a cheque but a bill of exchange.—*TRUNKFIELD v. PROCTOR* (1901), 21 C. L. T. 519; 3 O. L. R. 326.—*CAN.*

12 ii. — **Is a bill of exchange.]**—If not drawn on chartered bank.—An instrument in the form of a cheque, but not drawn upon a chartered bank, is a bill of exchange payable on demand.—*Cor-*

(1883), 9 App. Cas. 95, H. L. *Reid. Currie v. Misa* (1875), L. R. 10 Exch. 153, Ex. Ch. *Mentd. Hopkinson v. Forster* (1874), L. R. 19 Eq. 74.

11. — **Is a bill of exchange.]**—A cheque has all the well-known qualities of a negotiable instrument (*DARLING, J.*).—*JONES & Co. v. COVENTRY*, [1909] 2 K. B. 1029; 79 L. J. K. B. 41; 101 L. T. 281; 25 T. L. R. 736, D. C.

12. — **Is a bill of exchange.]**—A cheque is a bill of exchange.—*KEY v. MATHIAS* (1862), 3 F. & F. 279, N. P.

*Annotations:—**Mentd. Whistler v. Forster* (1863), 14 C. B. N. S. 248; *Austin v. Bunyard* (1864), 4 F. & F. 263, N. P.; *Bull v. O'Sullivan* (1871), L. R. 6 Q. B. 209.

**Privileges attaching thereto.]**

A banker's cheque is substantially a bill of exchange, attended with many, though not all of the privileges of a bill, & is within the definition of a "bill of exchange" given in 1882 Act, s. 3, & is a negotiable instrument both in Scotland & England.—*M'LEAN v. CLYDESDALE BANKING CO.* (1883), 9 App. Cas. 95; 50 L. T. 457, H. L.

*Annotations:—**Mentd. Re Boyse, Crofton v. Crofton, Canonge's Claim* (1888), 33 Ch. D. 612; *Re Bethell, Bethell v. Bethell* (1887), 34 Ch. D. 561; *National Bank v. Silke*, [1891] 1 Q. B. 435, C. A.; *Gordon v. Capital & Counties Bank*, [1902] 1 K. B. 242, C. A.; *Capital & Counties Bank v. Gordon, London City & Midland Bank v. Gordon*, [1903] A. C. 240, H. L.; *Dey v. Mayo*, [1920] 2 K. B. 346, C. A.

14. — **Revocable mandate—Revoked by death.]**—A cheque is only a revocable mandate, which may be stopped in the donor's lifetime & is revoked by his death (*BUCKLEY, J.*).—*Re BEAUMONT, BEAUMONT v. EWBank*, [1902] 1 Ch. 889; 71 L. J. Ch. 478; 86 L. T. 410; 50 W. R. 389; 46 Sol. Jo. 317.

*Annotation:—**Reid. Re Leaper, Blythe v. Atkinson*, [1916] 1 Ch. 579.

15. **Promissory note—Resembles a specialty—Is a security.]**—A promissory note, although not a specialty, resembles a specialty, & at all events it is a security (*PARKE, B.*).—*BAKER v. WALKER* (1845), 14 M. & W. 465; 3 Dow. & L. 46; 14 L. J. Ex. 371; 153 E. R. 558.

*Annotations:—**Mentd. Re London & Easton Banking Corp'n., Ex p. Longworth's Exors.* (1859), 29 L. J. Ch. 55, C. A.; *Palmer v. Bramley*, [1895] 2 Q. B. 406, C. A.; *Re A Debtor, Ex p. The Debtor*, [1908] 1 K. B. 344, C. A.

— **Construed as declaration of trust—Given by husband for advances from wife.]**—A husband allowed his wife, who had a separate estate, to keep a separate banking account, & to draw cheques in her own name. He was in the habit of borrowing money of her, & at the end of the year, of giving her a promissory note for the whole balance due to her. The husband died:—*Held*: the promissory note might be construed as a valid declaration of trust.—*MURRAY v. GLASSE* (1853), 1 Eq. Rep. 541; 23 L. J. Ch. 126; 22 L. T. O. S. 35; 17 Jur. 816.

*See, generally, GIFTS: HUSBAND & WIFE.*

*LINGS v. CALGARY* (1916), 34 W. L. R. 6; 10 W. W. R. 1; *affd.* (1917), 55 S. C. R. 406.—*CAN.*

12 iii. *S. P. CALGARY BREWING & MALTING CO., LTD. v. ROGERS*, [1917] 3 W. W. R. 344; 34 D. L. R. 252; 10 Sask. L. R. 246; *reversed on another point* (1917), 56 S. C. R. 165.—*CAN.*

**note—A contract—Consent essential—Parties must be ad idem.]**—A promissory note being a contract, the consent of the parties to it is of its essence as in other contracts. If a person signs a note wishing to & believing that he is signing, an for goods, the note is

17. — Old rule as to non-negotiability—Previous to 3 & 4 Anne, c. 9.]—Before the passing of the above Act a promissory note was not assignable or indorsable over within the custom of merchants.—*BULLER v. CRIPS* (1703), 6 Mod. Rep. 29; 87 E. R. 793.

18. — Custom to contrary too vague to qualify rule.]—The custom that a note in writing under the hand of a merchant in London, promising to pay a sum of money mentioned in it to the person named or to bearer, should be negotiable by delivery:—*Held*: bad as being too general.—*HORTON v. COGGS* (1690), 3 Lev. 299; 83 E. R. 698.

*Annotations*:—*Reid*. *Nicholson v. Sedgwick* (1698), 1 Ld. Raym. 180; *Clerke v. Martin* (1702), 2 Ld. Raym. 757.

19. — Note payable to bearer.]—A promissory note payable to bearer:—*Held*: not negotiable on the custom of merchants, but evidence of money lent to the drawer.—*CARTER v. PALMER* (1700), 12 Mod. Rep. 380; 88 E. R. 1393.

20. — Note payable to J. S. or order.]—*Assumpsit* upon a note payable to a man or order:—*Held*: such note was not within the custom of merchants, but ought to be declared upon a *mutualus*, & the note given in evidence.—*BURTON v. SOUTER* (1702), 2 Ld. Raym. 774; 92 E. R. 17.

21. — Payable to J. S. or bearer.]—A note payable to J. S. or order by a goldsmith:—*Held*: not a bill of exchange.

A note, by which J. N. promised to pay J. S. or bearer:—*Held*: not a bill of exchange.—*CLERKE v. MARTIN* (1702), 2 Ld. Raym. 757; 1 Salk. 129; 92 E. R. 6.

*Annotations*:—*Reid*. *Burton v. Souter* (1702), 2 Ld. Raym. 774. *Mentd.* *Williams v. Cutting* (1702), 2 Ld. Raym. 825; *Brown v. Marsh* (1721), Gilb. Ch. 154; *Smith v. Abbot* (1741), 2 Stra. 1152; *Grant v. Vaughan* (1764), 1 Wm. Bl. 485; *Wynne v. Raikes* (1804), 2 Smith, K. B. 98; *Morgan v. Jones* (1830), 1 Tyr. 21.

See, now, 1882 Act, s. 83.

Other negotiable instruments.]—See Part XX.,

## SECT. 2.—MEANING OF VARIOUS TERMS USED IN REGARD TO NEGOTIABLE INSTRUMENTS.

Accepted.]—See Part VI.,

“Accommodation bill.”]—See Part X., Sect. 3, *post*.

void.—*JACQUES CARTIER BANK v. LAULANDE* (1901), Q. R. 20 S. C. 32.—CAN.

c. — Note unintentionally signed without negligence.]—A person who without negligence, or any intention of signing a promissory note at all, in fact signs a promissory note, is not liable upon it.—*SAIR v. WARREN*, [1917] 3 W. W. R. 265; 34 D. L. R. 268.—CAN.

d. — Defts., at the instance of A., signed a piece of paper in connection with a raffle. A. thereupon fraudulently wrote above the signature the words of a promissory note. In an action on the note:—*Held*: in the absence of evidence on the part of defts., they were not liable.—*NATAL BANK v.*

& *LLOYD* (1882), 3 N. L. R. 71.—AF.

e. *Shah Joo hundi*.]—A *Shah hundi* is a bill payable to a *shah* or banker, which is similar to some extent to a cheque crossed generally, which is payable only to or through some banker, & such a *hundi* satisfies the requirements of a negotiable instrument.—*MADHO RAM v. NANDU MAL* (1911), 1 Lah. 429.—IND.

## PART I. SECT.

f. — “In a deed will include note.”—*BYNOR v. BORN* (1878), 4 V. L. R. 521.—AUS.

g. — “Approved acceptance memorandum of agreement between buyer & seller contained the following provision: “Balance of invoice to

22. “Approved bill.”]—*Semble*: an approved bill is a bill, to which there is no reasonable objection, & which ought to be approved.—*HODGSON v. DAVIES* (1810), 2 Camp. 530, N. P.

*Annotations*:—*Mentd.* *Trueman v. Loder* (1840), 11 Ad. & El. 589; *Humfrey v. Dale* (1857), 7 E. & B. 266.

23. “Aval” — “Underwriting.”]—By custom of merchants, as modified by English law, there may be an indorsement [of a bill] by a person, not a holder of the bill, who puts his name on the bill to facilitate the transfer to a holder. By the old foreign law, not in this respect entirely adopted by the English law, this might be by what was called an *aval* (said to be an antiquated word signifying “underwriting”), either on the bill itself or on a separate paper; & if such an *aval* was given by any one, his obligation to all subsequent holders of the bill was precisely the same as that of the person to facilitate whose transfer the *aval* was given. An *aval* for the honour of the acceptor, even if on the bill, is not effectual in English law. But the indorsement by a stranger to the bill on it to one who is about to take it is efficacious in English law, & has the same effect as an *aval* (*LORD BLACKBURN*).—*STEELE v. M’KINLAY* (1880), 5 App. Cas. 754; 43 L. T. 358; 29 W. R. 17, H. L.

*Annotations*:—*Reid*. *Holmes v. Durkee* (1883), Cab. & El. 23, N. P.; *Macdonald v. Whitfield* (1883), 8 App. Cas. 733, P. C.; *Jenkins v. Coomber*, [1898] 2 Q. B. 168, D. C. *Mentd.* *Wilkinson v. Unwin* (1881), 7 Q. B. D. 636, C. A.; *Leeds Bank v. Walker* (1883), 11 Q. B. D. 84; *Re Barnard*, *Edwards v. Barnard* (1886), 32 Ch. D. 447, C. A.; *Harburg Indiarubber Comb Co. & Winter v. Martin* (1902), 71 L. J. K. B. 529; *Glenie v. Bruce Smith*, [1907] 2 K. B. 507; *Shaw v. Holland*, [1913] 2 K. B. 15, C. A.

See, also, Part XIII., Sect. 6, *post*.

24. “Cash notes.”]—Bankers’ “cash notes” must be considered cheques payable on demand.—*BROOKE v. MIDDLETON* (1808), 1 Camp. 445, N. P.

See, also, Part II., Sects. 1, 2, *post*.

Delivery.]—See Part VIII., *post*.

25. Discounting.]—A., to whom B. was indebted, received a bill from B. “to get discounted or return on demand.” A. sent the bill to C. with directions to place it to A.’s account with C., which C. did, minus the discount:—*Held*: this was substantially a discounting of the bill by A.—*WILKINSON v. WHALLEY* (1843), 5 Man. & G. 590; 1 Dow. & L. 9; 6 Scott, N. R. 631; 12 L. J. C. P. 270; 7 Jur. 468; 134 E. R. 698.

See, further, Part VIII., Sect. 3, sub-sect. 2; Part XI., Sect. 11, *post*.

by approved acceptance”:—*Held*: the words “approved acceptance” had a well-known legal import, & meant an acceptance to which no reasonable objection could be taken.—*M’DOWALL & NEILSON’S TRUSTEE v. SNOWBALL*, 42 Sc. L. R.

*Proclamation*.]—*Held*: the word “indorser” as used in s. 49 (1) of the above Proclamation includes a person who indorses as an “aval.”—*SHAPIRO v. IBRAHIM* (1918), W. L. D. AF.

25 i. Discounting.]—A means an advance of money, upon transfer of a negotiable instrument, payable at a future day, as a—*LANDRY v. BANK OF NOVA* (1879), 29 N. B. R. 564.—CAN.



## 12 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Meaning of various terms used in regard to negotiable instruments. Sect. 3.]*

**26. "Draft."]**—The word "draft" includes a bill of exchange as well as a cheque, & embraces every request by the drawer upon the drawee to pay money (POLLOCK, C.B.).—HUNTER v. BOWYER (1850), 15 L. T. O. S. 281.

*See, also, Part II., Sects. 1, 2, post.*

**Holder.]**—See Part X., Sects. 4, 5,

**27. "Holder for value."]**—Every indorsee of a bill has his own title, & that of each intermediate party, & if he or any of such parties gave value for the bill, without fraud, he is a holder for value (LORD ABINGER, C.B.).—ISAAC v. FARRAR (1836), 1 M. & W. 65; 4 Dowl. 750; 1 Gale 385; Tyr. & Gr. 281; 5 L. J. Ex. 94; 150 E. R. 348.

*Annotations.*—*Fold*, Humphreys v. O'Connell (1841), 7 M. & W. 370. *Reid*, Pelly v. Rose (1844), 12 M. & W. 435. *Mentd.* Griffin v. Yates (1836), 1 Hodg. 387; Watson v. Wilkes (1836), 2 Har. & W. 187; Jones v. Senior (1838), 4 M. & W. 123; Baan v. Arnold (1840), 6 M. & W. 559; Purcell v. Salter (1841), 1 Q. B. 197; Schild v. Kilpin (1841), 8 M. & W. 673; Mitchell v. Cragg (1842), 10 M. & W. 367; Scott v. Chappelow (1842), 4 Man. & G. 336; Gibbons v. Mottram (1843), 6 Man. & G. 692; Cowper v. Garbett (1844), 13 L. J. Ex. 354; Herbert v. Nayer (1844), 5 Q. B. 965, Ex. Ch.

*See, further, Part X., Sect. 4, post.*

**28. "Honoured."]**—"Honoured" means paid at maturity (PARKE, B.).—WALTON v. MASCALL (1844), 13 M. & W. 452; 2 Dow. & L. 410; 14 L. J. Ex. 54; 4 L. T. O. S. 158; 153 E. R. 188, Ex. Ch.

*Annotations.*—*Mentd.* Barbor v. Mackrell (1892), 67 L. T. 108; Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 833.

*See, further, Part XIV., post.*

**Indorser & indorsee.]**—See Part XI., Sect. 15, *post*.

**"Issue."]**—See Parts IV. & VIII., Sect. 1,

**1. "Redeemable."]**—H. advanced money to P., & by agreement was to receive the whole amount due from P. in acceptances of D. Co. to C.'s drafts at 6, 12, & 18 months, "but if not sufficient bills at such dates are received from D. Co., then the balance to be made up in similar bills at 12, 24, & 36 months, upon which 10 per cent. interest shall be payable, such last-mentioned bills to be redeemable at any time";—*Held*: the word "redeemable" implied that P. might take up the last-mentioned bills at any time, irrespective of the other debts due by him to H. *Seem*: P. might take up any one or more of the bills at any time (LORD CRANWORTH, C.).—HILLS v. PARKER (1866), 14 L. T. 107, H. L.

*See, also, Part X., Sect. 4, sub-sect. 2, post.*

**30. Re-exchange.]**—Re-exchange is the measure of the damages incurred by the holder of a dishonoured bill, through having to obtain funds in the country where the bill was payable.—WILLIAMS v. AYKES (1877), 3 App. Cas. 133; 47 L. J. P. C. 1; 37 L. T. 732, P. C.

*Annotation.*—*Reid*, Re Commercial Bank of South Australia (1887), 36 Ch. D. 522.

*See, further, Part XIII., Sect. 11, sub-sect. 4, post.*

**h. Mortgage note.]**—Deft's. 1 on his \$100 in cash & giving a for the balance. Deft. notified of these facts:—*Held*: (1) the words "mtge. note" conveyed notice

to deft. that pltf. had received a note for the balance due him, & a mtge. to secure its payment, & the words either to two well-known & distinct instruments, or to one embracing the principal features of both;

(2) there is no distinction between a "mtge. note" & an ordinary note, except that the former is secured by a mtge.—RYAN v. TERMINAL CITY CO., LTD. (1893), 25 N. S. R. 131.—CAN.

**31. Renewal.]**—A bill is renewed when another bill is taken in its place, the parties to the bill & the amount of it being the same, though perhaps in some cases the interest due on the first bill is added. The bill which is renewed is the old bill (LINDLEY, L.J.).—BARBER v. MACKRELL (1892), 68 L. T. 29; 41 W. R. 341; 36 Sol. Jo. 696; 2 R. 72, C. A.

*See, further, Part VIII., Sect. 4, sub-sect. 1, post.*

**32. "Retire."]**—The word "retire," in reference to a bill of exchange, is susceptible of various meanings, according as it is applied to various circumstances. If the acceptor retires the bill at maturity, he takes it entirely from circulation, & it is in effect paid, but, if an indorser retires it, he merely withdraws it from circulation in so far as he himself is concerned, & may hold it with the same remedies as he would have had if he had been called upon in due course, & had paid the amount to his immediate indorsee, & this latter is the ordinary meaning of the word "retire."—ELSAM v. DENNY (1854), 15 C. B. 87; 23 L. J. C. P. 190; 23 L. T. O. S. 176; 18 Jur. 981; 2 W. R. 554; 139 E. R. 351; *sub nom.* ELSOM v. DENNY, 22 L. T. O. S. 213; 2 C. L. R. 900.

*See, further, Part XIV., Sect. 2, sub-sect. 4, post.*

**33. "Transferred."]**—A declaration stated that defts. made their promissory note, & promised to pay H., since deceased, or order, £300 on demand, that H. indorsed the note without making any delivery thereof, that H. died, having appointed his wife sole extrix., who afterwards transferred the note to pltf., to wit, by delivery thereof to him:—*Held*: the word "transferred" meant a delivery only, & not an indorsement & delivery, & the declaration was bad.—BROMAGE v. LLOYD (1847), 1 Exch. 32; 5 Dow. & L. 123; 16 L. J. Ex. 257; 9 L. T. O. S. 201; 154 E. R. 14.

*See, further, Part XI., Sect. 15, post.*

**34. Usance.]**—An action was brought upon a bill of exchange, in which pltf. declared, that deft. drew a bill of exchange, according to the custom of merchants, on W., merchant at Rotterdam, payable to H. within two usances & a half, & alleged them to be at Rotterdam 2 months & a half, & alleged a custom that, if such a bill were protested for non-payment, the drawer was liable, that the bill was assigned over, & tendered to W., & that he did not pay. Pltf. having protested, & brought his action against H.:—*Held*: it was not necessary to show the custom of merchants, but it was necessary to show how the usance should be intended, because it varied as places did, & judgment should be for pltf.—MEGGADOW v. HOLT (1891), 12 Mod. Rep. 15; 88 E. R. 1134; *sub nom.* MOGADARA v. HOLT, 1 Show. 317; Holt, K. B. 113.

**35. —.]**—Action upon the case on custom of merchants, on accepting a bill of exchange from Paris. Deft. demurred after issue offered on payment, & excepted that no time appeared when the bill was payable, being only on double usance, & no particular custom alleged that double usance

signified 2 months:—*Held*: it being a known term among merchants that usance was a month, double was 2 months, & it having been averred he had not paid in 2 months, it was enough, & judgment should be for pltf., deft. having waived advantage thereof by pleading payment.—*SMART v. DEAN* (1675), 3 Keb. 645; 84 E. R. 929.

36. —.]—Pltf. declared upon a bill of exchange drawn at Amsterdam payable at London at two usances, & did not show what the two usances were:—*Held*: the ct. could not take notice of foreign usances which varied, being longer in one place than another, & judgment should be for deft.—*BUCKLEY v. CAMBELL* (1706), 1 Salk. 131; 11 Mod. Rep. 92; 91 E. R. 124.

“Value received.”—See Part II., Sect. 6, *post*.

### SECT. 3.—EFFECT OF STATUTES.

37. Construction of 1882 Act.]—The proper way to deal with such an Act as 1882 Act, which was intended to be a code of the law relating to negotiable instruments, is in the first instance to examine the language of the Act & to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, & not to start with inquiring how the law previously stood, & then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If an Act, intended to embody in a code a particular branch of the law, is to be treated in this fashion, its utility will be almost entirely destroyed, & the very object with which it was enacted will be frustrated. The purpose of such an Act was that, on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction

of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the Act, & that an appeal to earlier decisions can only be justified on some special ground. The above Act was not intended to be merely a code of the existing law. It is not open to question that it was intended to alter, & did alter it in certain respects. And I do not think that it is to be presumed that any particular provision was intended to be a statement of the existing law, rather than a substituted enactment (*LORD HERSCHELL*).—*BANK OF ENGLAND v. VAGLIANO BROTHERS*, [1891] A. C. 107; 60 L. J. Q. B. 145; 64 L. T. 353; 55 J. P. 676; 39 W. R. 657; 7 T. L. R. 333, H. L.; *reversg.* S. C. *sub nom.* *VAGLIANO BROTHERS v. BANK OF ENGLAND* (1889), 23 Q. B. D. 243, C. A.

*Annotations*:—*Consd.* *Re English Bank of the River Plate, Ex p. Bank of Brazil*, [1893] 2 Ch. 438; *Re Budgett, Cooper v. Adams*, [1894] 2 Ch. 557; *Clutton v. Attenborough*, [1895] 2 Q. B. 306. *Reid*, *Robinson v. Canadian Pacific Ry. Co.*, [1892] A. C. 481, P. C.; *Clutton v. Attenborough*, [1895] 2 Q. B. 707, C. A.; *Scholfield v. Londenborough*, [1895] 1 Q. B. 536, C. A.; *River Thames Conservators v. Smeed Dean*, [1897] 2 Q. B. 334, C. A.; *Preist v. Last* (1903), 89 L. T. 33, C. A.; *Macbeth v. North & South Wales Bank*, [1906] 2 K. B. 718; *Holland v. Manchester & Liverpool District Banking Co.* (1909), 14 Com. Cas. 241; *Hall v. Hayman*, [1912] 2 K. B. 5; *Wimble, Mons v. Rosenberg*, [1913] 3 K. B. 743, C. A.; *MacLaren v. A.-G. for Quebec*, [1914] A. C. 258, P. C.; *Sanday v. British & Foreign Marine Insee.*, [1915] 2 K. B. 781, C. A.; *Quebec Ry. Light, Heat & Power Co. v. Vandy*, [1920] A. C. 662, P. C. *Mentd.* *Scholfield v. Londenborough*, [1896] A. C. 514, H. L.; *Clutton v. Attenborough*, [1897] A. C. 90, H. L.; *Jenkins v. Coomber* (1898), 47 W. R. 48, D. C.; *Vinden v. Hughes*, [1905] 1 K. B. 793; *Lewes Sanitary Steam Laundry Co. v. Barclay* (1906), 95 L. T. 444; *Macbeth v. North & South Wales Bank*, [1908] 1 K. B. 13, C. A.; *North & South Wales Bank v. Macbeth*, [1908] A. C. 137, H. L.; *Kepitigalla Rubber Estates v. National Bank of India*, [1909] 2 K. B. 1010; *MacConnell v. Prill*, [1916] 2 Ch. 57; *R. v. Kennaway* (1916), 86 L. J. K. B. 300, C. C. A.; *Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439, C. A.; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777, H. L.

See, generally, STATUTES.

#### PART I. SECT. 3.

j. *Intention of 1890 Act.*]—The above Act was intended to modify, alter, & codify the law relating to bills of exchange, cheques, & promissory notes.—*HINTON ELECTRIC Co. v. BANK OF MONTREAL* (1903), 23 C. L. T. Occ. N. 292; 9 B. C. R. 545.—CAN.

k. *Object of Negotiable Act, 1881.*]—The object of the above

Act is to legalise a system under which claims, arising upon certain instruments of a mercantile character, can be treated like ordinary goods which pass by delivery from hand to hand. But except within the prescribed limits such claims cannot be so treated.—*AKHOY KUMAR PAL v. HARIDAS BYSACK* (1913), 18 C. W. N. 494.—IND.

l. *Application of 1882 Act to nd.*]—The above Act, s. 100 has not repealed *pro tanto* the Mercantile Law Amendment Act (Scotland), 1856, wherever obligations or bills of exchange have been obtained by representations as to conduct, credit, or character.—*CLYDESDALE BANK, LTD. v. PATON* (1896), 85 L. J. P. C. 73, H. L.—SCOT.



# 14 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Part II.—Requirements of Form.

### SECT. 1.—REQUISITES COMMON TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

#### SUB-SECT. 1.—MUST BE UNCONDITIONAL.

See 1882 Act, ss. 3, 83.

See, also, cases in Part XXV., Sect. 1, sub-sect. 1,

**38. General rule.]—**A promissory note, payable on a contingency, cannot be declared on as a promissory note within 3 & 4 Anne, c. 9.—*CARLOS v. FANOURT* (1794), 5 Term Rep. 482; 101 E. R. 272.

**39. —.]—**An order for the payment of a sum of money in the event of a certain contingency, cannot be declared upon as a bill of exchange, though accepted by the drawee.—*RALLI v. SARELL* (1822), Dow. & Ry. N. P. 33.

**40. —.]—**A bill of exchange drawn on a contingency is absolutely void.—*PALMER v. PRATT* (1824), 2 Bing. 185; 9 Moore, C. P. 358; 3 L. J. O. S. C. P. 250; 130 E. R. 277.

**41. —.]—**A bill accepted payable on a contingency, is not a negotiable instrument, but the acceptor may be sued upon it when the contingency has happened.—*HANCOCK v. HODGSON* (1827), 4 Bing. 269; 12 Moore, C. P. 504; 5 L. J. O. S. C. P. 170; 130 E. R. 770.

*Annotation:—Mentd.* *Balu v. Kirk* (1849), 18 L. J. Q. B. 83.

**42. Note not payable at all events—Maker not to pay until larger sum recovered from third person.]—**A note was in the following form: "I, W. J. do owe E. H. £10, for the payment whereof I bind myself in witness. Memorandum that W. J. shall not be compelled to pay the £10 until he recovers £30 upon an obligation against A. B."—*Held*: the note was conditional.—*HAMOND v. JETHRO* (1611), 2 Brownl. 97; 123 E. R. 836.

*Annotation:—Mentd.* *Buckley v. Barber* (1851), 20 L. J. Ex. 114.

**43. — Amounting to indemnity only.]—**On June 13, 1782, debts. applied to pltf., to accept a bill for £300, which they would draw upon him, & which he did, not having any effects of theirs in his hands. The bill being indorsed over by lefts., & becoming due on Aug. 16, pltf. then paid t. At the time when it was drawn, debts. gave pltf. a paper in the following words: "Received, June 13, 1782, of H., his acceptance for £300 due Aug. 16, which we promise to pay when due, W. & Co."—*Held*: the note was nothing but an indemnity to pltf., against the consequences of his

The money was not payable at all events to pltf. Debts. might have taken up the bill, &

then pltf. would have had no demand against them (*BULLER, J.*).—*HESKUYSON v. WOODBRIDGE* (1784), 1 Doug. K. B. 186; 99 E. R. 108.

*Annotation:—Mentd.* *Cowley v. Dunlop* (1798), 7 Term Rep.

**44. — Note as security for balance which may be owed—No liability on note within six months.]—**Upon an instrument in the common form of a joint & several promissory note, signed by three persons, there was an indorsement written at the time of signing it, stating that the note was taken as a security for all balances to the amount of the sum within specified, which one of the three might happen to owe to the payee, that the note should be in force 6 months, & that no money should be liable to be called for sooner in any case. In an action against one of the sureties:—*Held*: the payee could not declare upon such instrument, as a promissory note, payable either on demand, or at 6 months after date.—*LEEDS v. LANCASHIRE* (1809), 2 Camp. 205, N. P.

*Annotations:—Consd.* *Davies v. Wilkinson* (1839), 10 Ad. & El. 98. *Refd.* *Clarke v. Percival* (1831), 2 B. & Ad. 660; *Bolton v. Dugdale* (1833), 4 B. & Ad. 619; *Brill v. Crick* (1836), 1 Gale, 441. *Mentd.* *Maillard v. Page* (1870), L. R. 5 Exch. 312.

**45. — To be set off against provisions in favour of maker in payee's will.]—**A. having given his daughter on her marriage the stock of a public-house, amounting in value to £1,200, she & her husband signed the following instrument: "On demand, we promise to pay to A. or his order £1,200, for value received in stock, etc., this being intended to stand against me, M., the daughter, as a set-off for that sum left me in my father's will above my sister's share":—*Held*: this was not a promissory note.

It clearly was not a note payable at all events (*TAUNTON, J.*).—*CLARKE v. PERCIVAL* (1831), 2 B. & Ad. 660; 9 L. J. O. S. K. B. 296; 109 E. R. 1289.

*Annotation:—Distd.* *Shenton v. James* (1843), 5 Q. B. 199.

**46. — Amounting to guarantee only.]—**An instrument was in the following form: "Twelve months after date, I promise to pay A. & B. £500, to be held by them as collateral security for any money now owing to them by C., which they may be unable to recover, on realising the securities they now hold, & others which may be placed in their hands by him":—*Held*: not a promissory note.—*ROBINS v. MAY* (1839), 11 Ad. & El. 213; 3 Per. & Dav. 147; 9 L. J. Q. B. 22; 3 Jur. 1188; 113 E. R. 396.

**47. — —.]—**An instrument was in the following form: "I undertake to pay to R. J. £6 4s. for a suit of, ordered by D. P.":—*Held*: not a promissory note.—*JARVIS v. WILKINS*

#### PART II. SECT. 1, SUB-SECT. 1.

m. Note not payable at all  
—To be deducted from another note.  
n. promised to pay to B. or order  
55. the amount to be deducted from  
note made by B. in his favour  
at same date:—*Held*: not  
promissory  
conditional

C.

n. — Amounting to security  
only.]—A note was preceded by the  
words: "To collaterally secure the  
payment of the money mentioned in  
an assignment of mtge.":—*Held*: the  
instrument was an agreement merely,  
& not a promissory note.—*McROBBIN  
v. TORRANCE* (1888), 5 Man. L. R. 114.  
—CAN.

o. — —.]—The  
note: "Three years after

promise to pay to the order of  
J. \$5,000, etc., value received", to  
which was added: "This note is  
given as collateral security for a  
guarantee of \$5,000 given to J. by  
A.":—*Held*: not a negotiable pro-  
missory note, not being made payable  
absolutely & at all events, but only as  
collateral security for A.'s

4 O. R. 565.—CAN.

(1841), 7 M. & W. 410; 10 L. J. Ex. 104; 5 Jur. 9; 151 E. R. 825.

48. —.]—An instrument was in the following form: "D. v. V. In consideration of D. not taking any further proceedings in the above actions, I hereby undertake with D., that I will pay him £3 5s. every quarter of a year from this day, until the whole of the principal money now due from J. & T. V. to D., £26 1s., with lawful interest, be paid & satisfied, the first of such quarterly payments to become due on Oct. 30 next. It is understood that this undertaking is not to be a release or discharge of the note signed by J. & T. V. to D., on, etc., but as an additional security for the above-mentioned amount now due on such note, with the interest":—*Held*: not a promissory note.

No money is secured by it which is payable at all events (PARKE, B.).—*DRURY v. MACAULAY* (1846), 16 M. & W. 146; 1 New Pract. Cas. 587; 16 L. J. Ex. 31; 8 L. T. O. S. 193; 153 E. R. 1135.

49. —.]—An instrument was in the following form: "In consideration of your advancing to M. & H. £250 on their joint & several promissory note, I undertake to pay £250 on demand, should their note not be met at maturity":—*Held*: not a promissory note.—*DICKINSON v. BOWER* (1897), 14 T. L. R. 146.

50. "If required."—An instrument was in the following form: "Borrowed of J. W. £200, to account for, on behalf of the A. Club, at . . . months' notice, if required":—*Held*: not a promissory note.

A similar instrument with the blank filled up with the word "two":—*Held*: not a promissory note.—*WHITE v. NORTH* (1849), 3 Exch. 689; 18 L. J. Ex. 316; 154 E. R. 1022.

Sum to remain at interest.—On death of payee.]—An instrument in the form of a promissory note was indorsed with a memorandum: "In the event of my [the payee's] death, the within-mentioned amount is not to be demanded of the maker, but same is to remain at interest & ultimately to be divided among the children of my daughter":—*Held*: this made the payment conditional, & the instrument was not a promissory note.—*RICHARDSON v. MARTYR* (1855), 25 L. T. O. S. 64.

52. — Seaman's advance note.] — A seaman's advance note:—*Held*: not a promissory note or order for the payment of money.

An advance note being an agreement to pay under certain conditions removes it from the class of promissory notes or cheques, which are peremptory orders to pay, without any condition affixed to them (HANNEN, J.).—*R. HOWIE* (1869), 11 Cox, C. C. 320.

p. —.]—"I promise to pay to H. or order \$1,264. This note to be held as collateral security. Value received":—*Held*: the instrument was not a promissory note, not being for the payment of money absolutely.—*HALL v. MERRICK* (1877), 40 U. C. R. 566.—CAN.

q. —.]—A pr note which, in the margin bears the words: "As security for the notes discounted," is not negotiable, & the discounteer cannot recover the amount thereof from the indorsers.—

NATIONALE v. LEMAIRE (1911), Q. R. 41 S. C. 37.—CAN.

r. — (Conditional clause added.) —H. promised to pay W. certain money & added that: "I am to have possession & use of the implement at my own risk, but the title thereto is not to pass to me until full payment of the price or any obligation given therefor":—*Held*: the note was not in effect an absolute unconditional promise to pay at all events, because of the machine in payment

A seaman's advance note, payable 3 days after the ship sailed & provided the seaman sailed in it:—*Held*: bad as a bill of exchange.—*CARDIFF BOARDING MASTERS' ASSOCN. v. CORY & SONS* (1893), 9 T. L. R. 388, D. C.  
*Annotation*:—*Reid*. *Rowlands v. Miller*, [1899] 1 Q. B. 735.

54. — Provision that dividend warrant will not be honoured after stated time.]—A warrant on a banker for the payment of dividend contained the following words printed at the bottom: "It will not be honoured after 3 months from date of issue, unless specially indorsed for payment by the secretary":—*Semble*: the document was a cheque & an unconditional order in writing addressed by the drawer to his banker within 1882 Act, ss. 3, 73, the provision at the bottom of the warrant being merely a definition by the directors as to what was a reasonable time within which the warrant ought to be presented.—*THAIRLWALL v. GREAT NORTHERN RY. CO.*, [1910] 2 K. B. 509; 79 L. J. K. B. 924; 103 L. T. 186; 26 T. L. R. 555; 54 Sol. Jo. 652; 17 Mans. 247, D. C.

55. — "To be retained."—Deft. gave plffs. a cheque, written on a blank sheet of paper, on the face of which he wrote "to be retained":—*Held*: the addition of the words "to be retained" merely imported a condition between drawer & drawee, & did not prevent the instrument being an unconditional order to pay as regards the bankers, & it was a cheque, upon which plffs. were entitled to sue.—*ROBERTS & CO. v. MARSH*, [1915] 1 K. B. 42; 84 L. J. K. B. 388; 111 L. T. 1060; 30 T. L. R. 609, C. A.

56. Note payable by A. or B. as alternative.]—A note stated that I. promised to pay to A., or order, a certain sum, & was signed I. or else G.:—*Held*: not a promissory note by G. within 3 & 4 Anne, c. 9.—*FERRIS v. BOND* (1821), 4 B. & Ald. 679; 106 E. R. 1085.

*Annotation*:—*Mentd*. *Palmer v. Pratt* (1824), 2 Bing. 185.

57. Promise to pay if payee married within stated time.]—An action was brought on a promissory note, by which deft. promised to pay 60 guineas to plff., if plff. should be married within 2 months. Plff. declared as on a bill of exchange, setting forth the custom of merchants, & averred that he was married, etc.:—*Held*: this was a note to pay money upon a mere contingency, & not within the custom of merchants, & judgment should be for deft.—*PEARSON v. GARRETT* (1693), Comb. 227; 4 Mod. Rep. 242; Skin. 398; 90 E. R. 444.

*Annotations*:—*Reid*. *Barnes v. Baldwin* (1741), 7 Mod. Rep. 417; *Colchan v. Cooke* (1742), Willes, 393; *Bishop v. Young* (1800), 2 Bos. & P. 78; *Priddy v. Henbrey* (1823), 3 Dow. & Ry. K. B. 165; *Palmer v. Pratt* (1824), 2 Morgan v. Jones (1830), 1 Cr. & J. 162.

58. Promise to pay or do something else.]—A was in the following form: "I promise to

for which the note was given might be revoked.—*MOLSONS BANK v. HOWARD* (1912), 5 D. L. R. 875.—CAN.

s. — Renewal if required.]—"Due y 27, 1908. Three months after date I promise to pay A. or order £25 sterling. To be renewed for 3 months if required. Sterling value received":—*Held*: not an unconditional promise to pay a sum certain in money & not a promissory note.—*LAMB v. SOMERVILLE* (1909), 2 Z. L. R. 138.—N.Z.



# 16 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Sect. 1.—Requisites common to bills of exchange,

pay J. S. so much money or render the body of J. N. to prison before such a day":—*Held*: not a negotiable note within 3 & 4 Anne, c. 9, the money not being absolutely payable, but dependant upon a contingency whether he would surrender J. N. to prison or not.—*SMITH v. BOHEME* (1714), cited 2 *Ld. Raym.* at pp. 1362, 1396; 8 *Mod. Rep.* at p. 362; 92 *E. R.* 387, 409.

*Annotations*:—*Expld.* *Morice v. Lee* (1725), 8 *Mod. Rep.* 362; *Barnesly v. Baldwyn* (1741), 7 *Mod. Rep.* 417. *Refd.* *Colehan v. Cooke* (1742), *Willes*, 393.

59. **Promise to pay one person**—If no payment made to another.]—A promise by C. to pay so much to A., if he does not pay so much to B.:—*Held*: not to be within 3 & 4 Anne, c. 9, not being negotiable.—*APPLEBY v. BIDDLE* (1717), cited 1 *Stra.* at p. 219; 8 *Mod. Rep.* at p. 363; *Bull N. P.* 5th ed. 268; 93 *E. R.* 483.

*Annotation*:—*Refd.* *Colehan v. Cooke* (1742), *Willes*, 393.

60. **Payable out of particular fund.**]—A bill payable out of a particular fund is not a bill of exchange.—*JENNEY v. HERLE* (1724), 11 *Mod. Rep.* 384; 8 *Mod. Rep.* 265; 2 *Ld. Raym.* 1361; 1 *Stra.* 591; 88 *E. R.* 1103.

*Annotations*:—*Expld.* *Macleod v. Snee* (1727), 2 *Stra.* 762. *Refd.* *Thomas v. Bishop* (1733), *Kel. W.* 136; *Barnesly v. Baldwyn* (1741), 7 *Mod. Rep.* 417; *Colehan v. Cooke* (1742), *Willes*, 393; *Carlos v. Fancourt* (1794), 5 *Term Rep.* 482; *Hancock v. Hodgson* (1827), 12 *Moore, C. P.* 504.

61. —.]—An order for the payment of money out of a particular fund is no bill of exchange.—*v. LYNCH* (1729), 2 *Ld. Raym.* 1563; 92 *E. R.* 512.

62. —.]—A bill accepted payable out of a particular fund is not a negotiable instrument, but the acceptor may be sued upon it when the fund is available.—*HANCOCK v. HODGSON* (1827), 4 *Bing.* 269; 12 *Moore, C. P.* 504; 5 *L. J. O. S. C. P.* 170; 130 *E. R.* 770.

*Annotation*:—*Mentd.* *Bain v. Kirk* (1849), 18 *L. J. Q. B.* 83. *See, now*, 1882 Act, s. 3 (3).

63. — **Out of growing subsistence of drawer.**]—A bill, requiring the drawee to pay "£7 a month out of the growing subsistence of the drawer," is not a negotiable bill of exchange within the custom of merchants, & a promise to pay it *secundum tenorem billar*, will not support an action.

It concerns neither trade nor credit. If the party die, or his subsistence be taken away, it is not to be paid. It may never be paid (*PARKER, C.J.*).—*JOSSELYN v. L'ACIER* (1715), 10 *Mod. Rep.*

60 i. **Payable out of particular fund.**]—A money order containing expressly showing the account upon which the payment is to be made, is not a bill of exchange.—*JOHNSON v. BRADEN* (1887), 1 *B. C. R.* 265.—*CAN.*

60 ii. —.]—An order to pay money out of a particular fund is conditional & not a bill of exchange.—*McDONALD v. McDONALD* (1895), 40 *N. S. R.* 71.—*CAN.*

60 iii. — **"Out of S.'s money."**]—H. signed the following document, "Mr. O.—B. wants \$25, 12 o'clock this Feb. 15. I want you to get it him immediately out of S.'s money." O. accepted it:—*Held*: the order was not a bill, because payable out of a particular fund.—*OCHERMAN v.* (1869), 12 *C. P.* 362.—*CAN.*

60 iv. — **Out of money due drawer by drawee.**]—An order in writing, addressed by a creditor to his debtor, directing him to pay a certain sum out of the moneys due to the drawer by the drawee, & to charge the same to the drawer, is not a bill of exchange, but an assignment to the payee of so much of the claim of the drawer against the drawee.—*WARD v. ROYAL CANADIAN INSURANCE CO.* *Q. R.* 2 *S. C.* 229.—*CAN.*

60 v. — **"Out of balance on account."**]—W. addressed an order to D. to pay A. certain money "out of the balance due" W. by D. on account of a contract. D. accepted the order:—*Held*: such order was not a bill of exchange, because not unconditional within Transvaal Proclamation

317; 88 *E. R.* 745; *sub nom.* *JOSCELINE v. LASSERE*, *Fortes. Rep.* 281.

*Annotations*:—*Consd.* *Barnesly v. Baldwyn* (1741), 7 *Mod. Rep.* 417; *Colehan v. Cooke* (1742), *Willes*, 393. *Refd.* *Jenney v. Herle* (1723), 11 *Mod. Rep.* 384; *Morice v. Lee* (1725), 8 *Mod. Rep.* 362; *Thomas v. Bishop* (1733), *Lee temp. Hard.* 1; *Oridge v. Sherborne* (1843), 11 *M. & W.* 374.

64. **Of premises "in specified place."**]

A written promise for the payment of money to J. S. or order for value received of the premises in R. Lane is a negotiable note.—*BURCHELL v. SLOCOCK* (1728), 2 *Ld. Raym.* 1545; 92 *E. R.* 502.

65. — **Out of freight to be carried.**]—An instrument was in the following terms: "Pay R. B. 1 month after date £200 on account of freight of the galley E., & this order shall be your sufficient discharge for same, J. G."—*Held*: not a bill of exchange.—*BANBURY v. LISSET* (1744), 2 *Stra.* 1211; 93 *E. R.* 1134.

*Annotations*:—*Distd.* *Russell v. Phillips* (1850), 19 *L. J. Q. B.* 297. *Refd.* *Griffin v. Weatherby* (1868), *L. R.* 3 *Q. B.* 753.

**Provided money left by third person for purpose—Or if otherwise able to pay it.**]—An instrument was in the following form: "We, A. & B., promise to pay C. £116 11s. (value received) on the death of D., provided he leaves either of us sufficient to pay such sum, or if we shall be otherwise able to pay it":—*Held*: a note payable upon an uncertain contingency, & not negotiable.—*ROBERTS v. PEAKE* (1757), 1 *Burr.* 323; 97 *E. R.* 333.

67. **Specific, future & uncertain fund.**]

A bill of exchange, drawn on a specific, future, & uncertain fund:—*Held*: not good.—*DAWKES v. DE LORRAINE* (1771), 2 *Wm. Bl.* 782; 3 *Wils.* 207; 96 *E. R.* 459.

*Annotations*:—*Distd.* *Kingston v. Long* (1784), 4 *Doug. K. B.* 9; *Hancock v. Hodgson* (1827), 12 *Moore, C. P.* 504.

**Out of purchase - money.**]—The holder of a note gave it up, on receiving an order to pay out of purchase-money:—*Held*: such order was not a bill of exchange, being payable out of a particular fund.

It is nothing but a direction by a man to pay part of his money to another for a foregone valuable consideration (*LORD THURLOW, C.*).—*YEATES v. GROVES* (1791), 1 *Ves.* 280; 30 *E. R.* 343, *L. C.*

*Annotations*:—*Refd.* *Burn v. Carvalho* (1839), 4 *My. & Cr.* 690. *Mentd.* *Best v. Argles* (1834), 2 *Cr. & M.* 394; *Hutchinson v. Heyworth* (1838), 9 *Ad. & El.* 375; *Rodick v. Gandell* (1852), 1 *De G. M. & G.* 763, *L. C.*

69. **Out of deposited security.**]—A note, by which A. promises to pay to the bearer £50

11 of 1902, s. 3 (3).—*BRICK & POTTERIES CO., LTD. v. DOORNFONTEIN HEBREW CONGREGATION* (1907), *T. H. AF.*

60 vi. — **Value in account drawer.**]—A bill was drawn by C. upon F. for £1,500, "value in account with" C.; it was accepted & discounted at a bank. In a suspension of a threatened charge at the bank's instance against the acceptor:—*Held*: the words "value in account with C." did not render the acceptance contingent on F. being possessed of a secular fund, & afforded no ground objecting to the instrument as not constituting a proper bill of exchange.—*CHURCH v. WESTERN BANK* (1848), 16 *Dunl. (Ct. of Sess.)* 1573.—*SCOT.*

"being the portion of a value as under deposited in security for the payment thereof," may be declared upon as a promissory note.—*HAUS-SOULLIER v. HARTSINCK* (1798), 7 Term Rep. 733; 101 E. R. 1225.

70. — "All my proportion of prize-money." — "Please to pay to Y. all my proportion of prize-money due to me for services on board," figured in the name of a seaman on board the ship, is an order for payment of money or bill of exchange, the forgery whereof is a felony.—*R. v. MACKINTOSH* (1800), 2 Leach, 883; 2 East, P. C. 942.

**Proceeds of sale.**—A note promising to pay "on the sale or produce, immediately when sold, of the White Hart, St. Albans, Herts, & the goods, etc., value received," cannot be declared upon as a promissory note within 3 & 4 Anne, c. 9, though it be averred, that before the action commenced the White Hart & the goods were sold.—*HILL v. HALFORD* (1801), 2 Bos. & P. 413; 126 E. R. 1357.

72. — **Proceeds of consignment.**—A. having consigned goods to B., sent him the following order: "Pay to C. the proceeds of a shipment of goods, value about £2,000, consigned by me to you." B., by writing, consented to pay over the full amount of the net proceeds of the goods:—*Held*: neither of the instruments required such a stamp as the Stamp Acts imposed on bills, drafts, or orders for the payment of money.—*JONES v. SIMPSON* (1823), 2 B. & C. 318; 3 Dow. & Ry. K. B. 545; 2 L. J. O. S. K. B. 22; 107 E. R. 402.

**Annotations**:—*Consd. Crowfoot v. Gurney* (1832), 2 Moo. & S. 473. *Reid. Hutchinson v. Heyworth* (1838), 9 Ad. & El. 375; *Braybrooke v. Meredith* (1843), 13 Sim. 271. *Mentd. Lord v. Kellett* (1835), 2 My. & K. 1.

73. — **Out of profits.**—Pltf. having agreed with deft. for the purchase of one of several shares in a business in which he was engaged with others, an agreement in writing was entered into between them that the amount should be £3,867 3s. 9d., in part payment of which pltf. would take yearly deft.'s share of the profits of the concern. The agreement contained a memorandum that a note of hand had been given for the amount, bearing interest at 5 per cent. The note referred to in the agreement contained, in the body, a stipulation that pltf.'s amount of profit should be applied yearly to the liquidation of it:—*Held*: the condition that the note should be paid out of the profits made it no note at all.—*BAYLIS v. RINGER* (1838), 7 C. & P. 691.

74. — **On account of moneys advanced by me.**—J., of S. & F. Co., Ltd., signed the following document: "Please to pay to [pltf.], or order £600, on account of money advanced by me to S. & F. Co., Ltd.":—*Held*: the order, on the face of it, was not an order to pay out of a particular fund, but a bill of exchange.

71 i. — **Proceeds of sale.**—An order upon an auctioneer to pay "from the proceeds of my sale to be held on Nov. 26," & accepted by such auctioneer "subject to sufficient funds after previous order for £31," is not a bill of exchange.—*WINGROVE v. GOODCHILD* (1892), 6 H. C. 164.—S. AF.

a "Amount of enclosed account assigned to me."—The words "amount of enclosed account assigned to me by A. B." inserted in a bill of exchange state the transaction & to the bill, & do not vitiate

by making the order to pay  
—*ASHGROFT & Co. v. DENNIS*  
6 N. Z. L. R. 432.—N. Z.

75 i. **Order for** with indication due  
to P. £150, & deduct same from moneys coming due to me on account of contract:—*Held*: the direction to deduct from the moneys coming due to the drawer was only an indication of the particular fund from which the drawee was to reimburse himself, & the instrument was unconditional

The words "on account of money advanced by me to S. & F. Co., Ltd.," must be taken to be inserted merely to explain why the order is drawn, as in the common phrase, value received, & not to make the order payable out of a particular fund or on a contingency (*BLACKBURN, J.*).—*GRIFFIN v. WEATHERBY* (1868), L. R. 3 Q. B. 753; 9 B. & S. 726; 37 L. J. Q. B. 280; 18 L. T. 881; 17 W. R. 8.

**Annotation**:—*Mentd. Greenway v. Atkinson* (1881), 29 W. R. 560, C. A.

75. **Order coupled with indication of fund for reimbursement—Half-pay.**—A. drew a bill of exchange dated May 25, whereby he requested deft. 1 month after date to pay to pltf. or order £9 10s. "as my quarterly half-pay, to be due from June 24 to Sept. 27 next, by advance":—*Held*: the instrument was a bill of exchange, since his quarterly half-pay was a certain fund & the mention of it was only by way of direction how his drawee should reimburse himself.—*MACLEED v. SNEE* (1727), 2 Stra. 762; 11 Mod. Rep. 400; 93 E. R. 833; *sub nom. MACLEED v. SLEED*, 1 Barn. K. B. 12; 2 Ld. Raym. 1481.

**Annotation**:—*Reid. Dawkes v. De Lorraine* (1771), 3 Wils. 207.

76. — — — — —]—A bill was drawn payable "out of my half-pay, which will become due Jan. 1":—*Held*: the payee could recover.—*STEVENS v. HILL* (1805), 5 Esp. 247.

77. — **Dividends accrued.**—In 1872 B., who was living in France, drew a document, purporting to be a bill of exchange payable on demand, on the Bank of England for £7,000, "on account on the dividends & interest due on the capital & dividends registered in the books of" the Bank of England in the names of C. & B., "which you will please charge to my account, & credit according to a registered letter I have addressed to you":—*Held*: (1) the reference to the dividends & interest due was merely a statement as to the fund, out of which the drawees were to reimburse themselves; (2) the reference to the registered did not incorporate the terms of the letter.—*Re BOYSE, CROFTON v. CROFTON, CANONGE'S CLAIM* (1880), 33 Ch. D. 612; 56 L. J. Ch. 135; 55 L. T. 391; 35 W. R. 247.

78. "Provided certain terms are complied with."—An order to pay money, "provided certain terms are complied with," cannot be available as a bill of exchange.—*KINGSTON v. LONG* (1784), 4 Doug. K. B. 9; 99 E. R. 740.

79. "As per memorandum of agreement."—An instrument was in the following form: "I promise to pay to J. or his order, at 3 months after date, £100 as per memorandum of agreement B.":—*Held*: a promissory note in that form was, on the face of it, an unconditional promise to pay.—*JURY v. BARKER* (1858), E. B. & E. 459; 27

1908 Act, s. 3.—*PEACOCK & Co. v. WILLIAMS* (1909), 28 N. Z. L. R.

b. **Promise to pay**—(On of shares to note.)—The language of a document was: "4 months after date I promise to pay X. or order" £150. One hundred & fifty £1 shares in D. attached. Sterling value received:—*Held*: (1) it was a condition of payment that one hundred & fifty shares in D. should be attached to the note when presented for payment; (2) the document was not unconditional within



## 18 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Secl. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sects. 1 & 2.]*

L. J. Q. B. 255; 31 L. T. O. S. 177; 4 Jur. N. S. 587; 6 W. R. 660; 120 E. R. 580.

**80. Payable after sight or when realised.]—**An order for a sum "payable 90 days after sight, or when realised," is not a bill of exchange, as the latter alternative makes the sum payable on a contingency.—*ALEXANDER v. THOMAS* (1851), 16 Q. B. 333; 20 L. J. Q. B. 207; 16 L. T. O. S. 387; 15 Jur. 173; 117 E. R. 906.

**81. Receipt appended to order—Payment conditional on signature.]—**Pltfs. received from a co., which was indebted to them, an order addressed to the co.'s bankers, for the payment of the amount of their debt. The payment was made conditional upon signature of a receipt appended to the order:—*Held*: the order was not a cheque within 1882 Act.—*BAVINS, JUNR. & SIMS v. LONDON & SOUTH WESTERN BANK*, [1900] 1 Q. B. 270; 69 L. J. Q. B. 164; 81 L. T. 655; 48 W. R. 210; 16 T. L. R. 61; 5 Com. Cas. 1, C. A.

*Annotation:—Mentd. Morison v. London County & West Bank, [1914] 3 K. B. 356, C. A.*

**82. ———.]—**An instrument constituting an order for the payment of money, & crossed, but payable only upon signature by the payee of a form of receipt at its foot, is not a bill of exchange within 1882 Act.—*CAPITAL & COUNTIES BANK v. GORDON, LONDON CITY & MIDLAND BANK v. GORDON*, [1903] A. C. 240; 72 L. J. K. B. 451; 88 L. T. 571; 51 W. R. 671; 19 T. L. R. 462; 8 Com. Cas. 221, H. L.; *affg. S. C. sub nom. GORDON v. LONDON CITY & MIDLAND BANK, GORDON v. CAPITAL & COUNTIES BANK*, [1902] 1 K. B. 242, C. A.

*Annotations:—Reid. Brown, Brough v. National Bank of India* (1902), 18 T. L. R. 669. *Mentd. Akrokerri (Atlantic) Mines v. Economic Bank*, [1904] 2 K. B. 465; *Bevan v. National Bank, Bevan v. Capital & Counties Bank* (1906), 28 T. L. R. 65; *Holland v. Manchester & Liverpool District Banking Co.* (1909), 14 Com. Cas. 241; *Jones v. Coventry*, [1909] 2 K. B. 1029; *Crumplin v. London Joint Stock Bank* (1913), 109 L. T. 856; *Morison v. London County & Westminster Bank*, [1914] 3 K. B. 356; *Dey v. Mayo*, [1920] 2 K. B. 346, C. A.

**83. ——— Payment not conditional on signature.]—**Under a scheme debts. undertook for 4 years from Apr. 1902 to distribute annually among its customers who came into the scheme its entire net profits on goods sold in the United Kingdom, & in addition, for such years to distribute to those customers £200,000 *per annum*, or £50,000 each quarter, the share of each customer to be in proportion to his purchases from the co. in each year & quarter respectively. After one payment of the quarterly bonus had been made, debts. on Sept. 27, 1902, sold their business & went into voluntary liquidation. The second quarter having elapsed, the liquidator of the co. sent cheques to the several customers, including plts., with a covering letter, which described the cheques as being "your share of the second & final bonus distribution of O.'s Ltd. for the quarter ending Sept. 30 last, at which date the co. ceased to carry on business." The

cheques had printed at the foot thereof the words "the receipt at the back hereof must be signed, which signature will be taken as an indorsement of the cheque." On the back was printed, "Received from J. H., liquidator of O.'s Ltd., this cheque for £ , being my share of the second & final bonus distribution of the co." :—*Held*: the cheques were negotiable instruments, notwithstanding the words printed at the foot, as the orders to pay to the bankers were unconditional, the words at the foot not being addressed to them.—*NATHAN v. OGDENS, LTD.* (1905), 93 L. T. 553; 21 T. L. R. 775; 49 Sol. Jo. 725; *affd.* without touching this point, 94 L. T. 126, C. A.

*Annotation:—Apprvd. Roberts v. Marsh, [1915] 1 K. B. 42.*

**84. Conditional clauses added.]—**A document was signed in the following form: "I, G. R., owe you, Mrs. B., £100 in consideration of money lent, & will pay same (plus interest at the rate of 10 per cent. *per annum*) on or before Oct. 7, 1907. Interest to be paid half-yearly on Apr. 7 & Oct. 7. G. R. In the event of G. R. failing to pay the above through any cause whatsoever we hereby make ourselves responsible for such amount due. Signed, J. P.; B. R. I, B. R., agree to Mrs. B. holding the policy on the life of my husband, G. R., until the above sum is paid in full. Signed, B. R." :—*Held*: the document was not a promissory note.

How could such a document be negotiated? It is a promise with conditional clauses added (*RIDLEY, J.*).—*BALCK v. PILCHER* (1909), 25 T. L. R. 497.

**85. Note to be void—On dispute arising between maker & third person.]—**A note promising to pay F. or order a sum certain, the amount of the purchase-money of a quantity of fir belonging to H., with an indorsement thereon at the time of making the note, that it was given on condition that it should be void if any dispute should arise between H. & W. respecting the fir:—*Held*: not a promissory note within 3 & 4 Anne, c. 9.—*HARTLEY v. WILKINSON* (1815), 4 M. & S. 25; 4 Camp. 127; 105 E. R. 744.

*Annotations:—Reid. Clarke v. Percival* (1831), 2 B. & Ad. 660; *Brill v. Crick* (1836), 1 Gale, 441.

— At four years after date if then living.]—This is not like a note payable on the maker's death, which is an event that must happen, but it is contingent whether the note will ever be payable, for if the maker should die within the 4 years, no payment is to be made (*ABBOTT, C.J.*).—*BRAHAM v. BURB* (1826). (*Chitty on Bills of Exchange*, 11th Ed., p. 93, N. P.

**87. ——— On death or non-return of specified person before due date.]—**By an instrument, purporting to be a promissory note, A. 9 years after the date thereof, promised to pay to B. and C. £75, with lawful interest, provided D. should not return to England, or his death be duly certified in the meantime, for value received:—*Held*: such instrument was void as a promissory note.—*MORGAN v. JONES* (1830), 1 Cr. & J. 162; 1 Tyr. 21; 9 L. J. O. S. Ex. 41; 148 E. R. 1376.

(the Commonwealth 1909 Act.  
[1915] V. L. R. 374.

— A document in the form of a promissory note whereby debt. promised to pay \$3,000 at a certain future date, contained on the face thereof the following

"Stock certificate for fifty attached to be surrendered on payment":—*Held*: a promissory note.—*O'GRADY v. LECOMTE*, [1918] 2 W. W. R. 267; [1919] 1 W. W. R. 333; 57 S. C. R. 566.—CAN.

of  
—A letter was written by

an exor. to the father of certain legatees, promising to pay the legacy, without interest, to the children, at Martinmas on a proper discharge being granted him for same:—*Held*: the document was not a promissory note, a condition being attached to the promise.

*ROBERTSON* (1864),  
Jur. 580.—SCOT.

**88. On death of payee.]**—An instrument, whereby A. promises to pay B. a sum of money by instalments, but which is to become void upon the death of B., is not a promissory note, but an agreement to pay upon a contingency.—*WORLEY v. HARRISON* (1835), 3 Ad. & El. 669; 5 Nev. & M. K. B. 173; 1 Har. & W. 426; 5 L. J. K. B. 17; 111 E. R. 568.

**89. Note reciting that security given.]**—An instrument was in the following form: "On demand I promise to pay to J. or order, £120, with lawful interest for same, for value received, & I have deposited in his hands title-deeds to lands purchased from the devisees of T. as a collateral security for same";—*Held*: a promissory note transferable by indorsement.—*WISE v. CHARLTON* (1836), 4 Ad. & El. 786; 2 Har. & W. 49; 6 Nev. & M. K. B. 364; 6 L. J. K. B. 80; 111 E. R. 979.

*Annotations*:—*Reid*. *Storm v. Stirling* (1854), 3 E. & B. 832. *Mentd.* *Fancourt v. Thorn* (1846), 10 Jur. 639.

**90. —.]**—An instrument was in the following form: "On demand, I promise to pay H., or order £500, for value received, with interest, & I have lodged with H. the counterpart leases, etc., as a collateral security for the £500 & interest";—*Held*: the instrument required only to be stamped as a promissory note.—*FANCOURT v. THORNE* (1846), 9 Q. B. 312; 1 New Pract. Cas. 440; 15 L. J. Q. B. 344; 7 L. T. O. S. 256; 10 Jur. 639; 115 E. R. 1293.

**91. Note for ascertained damages.]**—An instrument was in the following form: "On demand I promise to pay to S. £50, in consideration of foregoing & forbearing an action at law in the Ct. of Queen's Bench, for damages ascertained by consent to amount to that sum, by reason of the injury sustained by his wife, in respect of my liability for non-repair of a footway";—*Held*: the instrument was a promissory note.

This is a promissory note made on an executed & completed consideration. The consideration was a past consideration, & the damages had been ascertained. This is an undertaking to pay at all events (*LORD DENMAN, C.J.*).—*SHEXTON v. JAMES* (1843), 5 Q. B. 190; 1 Dav. & Mer. 331; 7 Jur. 1130; 114 E. R. 1224; *sub nom.* *SHELTON v. JAMES*, 13 L. J. Q. B. 90.

*Annotation*:—*Consd.* *Tanner v. Moore* (1846), 9 Q. B. 1.

**89 i. Note reciting that**  
*Held*: the words: "This being collateral security to mtge., by M. to L. over five acres of Cov." appearing on a promissory note did not import a condition that the note was only payable in event of M. not paying off the mortgage.—*LIPSCOMB v. MATTON* (1894), 1 S. W. L. R.

#### PART II. SECT. 1, SUB-SECT. 2.

**92 i. Necessity for drawer's signature.]**—W. drew up a note payable to the order of M., which he handed B. who took it away to obtain M.'s indorsement, & returned with M.'s name indorsed. B. then handed note to C. who signed his name as drawer. B. was indicted for forging the signature on a promissory note:

B. could not be convicted on the indictment as framed. The instrument, because the maker's name was not signed at the time of the forgery, was not a promissory note.—*R. v. McFEE* (1886), 13 O. R. 8.—*CAN.*

**92 ii. —.]**—In an action against the maker of a promissory note the statement need not allege that deft. signed the note, if other words convey the same meaning.—*GAUTHIER v. LOWE* (1917), Q. R. 53 S. C. 276.—*CAN.*

**92 iii. —.]**—A signature of a bill of exchange may be implied from the word "made" being used in the declaration.—*SOUTHEY v. MAGAN* (1848), 10 L. L.

**92 iv. —.]**—Plt. was the holder of a promissory note alleged to have been made by deft., payable to the order of M., or bearer. Deft. denied

#### SUB-SECT. 2.—MUST BE SIGNED—PROOF OF SIGNATURE.

See 1882 Act, ss. 3, 22, 83, 91.

**Signature essential to liability.]**—See Part IX., Sect. 2, *post*.

**92. Necessity for drawer's signature.]**—If a note be of deft.'s own writing, it need not be said in the declaration that he signed it.

"I, J. S., promise to pay" is as good as "I promise to pay, subscribed J. S." (*per CUR.*).—*TAYLOR v. DOBBINS* (1720), 1 Stra. 399; 93 E. R. 592.

*Annotations*:—*Apld.* *Elliot v. Cooper* (1724), 2 Ld. Raym. 1376. *Reid.* *Atkinson v. Coatsworth* (1722), 1 Stra. 612.

**93. —.]**—Forging an acceptance to an instrument in the form of a bill, but without the drawer's name:—*Held*: not within Forgery Act, 1830 (c. 66), s. 4.—*R. v. BUTTERWICK* (1839), 2 Mood. & R. 196.

See, generally, CRIMINAL LAW & PROCEDURE.

**94. —.]**—A document purported to be a bill of exchange, but had not been signed by the drawer:—*Held*: not a bill of exchange.—*R. v. MOPSEY* (1868), 32 J. P. 631; 11 Cox, C. C. 143.

**95. —.]**—A document in the form of a bill of exchange, but accepted with the drawer's name in blank, does not exist as a bill until the drawer's name is inserted.—*Re HAYWARD, Ex p. HAYWARD* (1871), 6 Ch. App. 546; 40 L. J. Bcy. 40; 24 L. T. 782; 19 W. R. 833, L. J. J.

*Annotations*:—*Reid.* *Faulks v. Atkins* (1893), 10 T. L. R. 187. *Mentd.* *Re Foulds, Ex p. Learoyd* (1878), 10 Ch. D. 3, C. A.; *Re Moore, Bartholomew's Case* (1899), 68 L. J. Ch. 302, C. A.

**96. —.]**—A document in the form of a bill of exchange, but without any drawer's name thereon:—*Held*: not a bill of exchange.—*R. v. HARPER* (1881), 7 Q. B. D. 78; 50 L. J. M. C. 90; 44 L. T. 615; 29 W. R. 743; 14 Cox, C. C. 574, C. C. R.

*Annotation*:—*Reid.* *R. v. Bowerman* (1890), 60 L. J. M. C. 13, C. C. R.

**97. —.]**—Prosecutors being desirous of raising money on their acceptances, entered into an agreement in writing with prisoner, that he should draw bills on them up to a certain amount, & that they should accept the bills, that prisoner should then endeavour to get the bills discounted, & that, in the event of his succeeding in so doing, he should

making the note. The evidence was conflicting:—*Held*: pltt. should have been non-suited or had a verdict found against him.—*HARD v. AGNEW* (1873), 22 U. C. R. 559.—*CAN.*

**v. —.]**—In an action against a father & two sons upon promissory notes said to have been signed by the three, the signature of the father (being denied) was not proved: *Held*: the father was not liable. *NORTHWEST THREADER Co. v.* (1910), 15 W. L. R. 181.—*CA*

**92 vi. — Burden of proof.]**—In a charge on a bill of exchange on the ground of forgery:—the onus lay upon the chargers to prove affirmatively that the signature purporting to be those of the complainer was in fact exhibited by the drawer.—*THE NATIONAL BANK OF SCOTLAND LTD.*, [1910] S. C.



## 20 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sect. 2.]*

pay them a certain proportion of the proceeds, or, upon failure to get them discounted within a certain time, should return the bills to them. In pursuance of such agreement prisoner drew two bills of exchange upon prosecutors, who accepted them & handed them back to prisoner. At the time the bills were so handed back to prisoner the drawer's name had not been inserted, but in other respects they were then complete bills of exchange. Prisoner subsequently completed the bills by the insertion of a drawer's name, & succeeded in getting them discounted, but in breach of his written agreement with prosecutors converted the whole of the proceeds to his own use:—*Held*: the acceptances at the time of their delivery by prosecutors to prisoner were "securities for the payment of money" within Larceny Act, 1861 (c. 96), s. 75. —*R. v. BOWERMAN*, [1891] 1 Q. B. 112; 60 L. J. M. C. 13; 63 L. T. 532; 55 J. P. 373; 39 W. R. 207; 7 T. L. R. 47, C. C. R.

*See, further, CRIMINAL LAW & PROCEDURE.*

**98. Incomplete & inchoate until signed by drawer—Bill signed only by one of two drawers.]**—J., by indenture, assigned to pltf. a ninth part of his share in the residue of the estate of T., deceased. By an order of July 29, 1842, made in a suit in Ch., of P. v. N., the V.-C. ordered defts. in that suit to retain £250, being part of the produce of J.'s share of the residuary estate of T., to be paid to such person as A. & J. should jointly direct. It was afterwards agreed between the parties, that £50, to be considered as part of the £250, should be paid to the solrs. for J. & pltf. An action having been brought to recover the £50, pltf. tendered in evidence the following document: "To the exors. of T., deceased. P. v. N. Gentlemen, we do hereby authorise & require you to pay to P., or his order, £250, being the amount directed by the order of July 29 last, to be paid to our order." The document was signed by J. only:—*Held*: it was not a bill of exchange.

Another objection might have been made, that the instrument was not to have any operation until it was signed by both. Until that was done, it was nothing but an incomplete document (*PARKIE, B.*).

It was not complete; it was merely inchoate (*PLATT, B.*). —*RUSSELL v. POWELL* (1845), 14 M. & W. 418; 14 L. J. Ex. 269; 5 L. T. O. S. 1; 153 E. R. 538.

—*Mentd. Ellison v. Collingridge* (1850), 9 B. 570.

**99. — Cheque signed only by one of several drawers.]**—The practice was for a majority of the officers of a parish to draw cheques on the treasurer of a union, & one of their blank cheques, filled up for £1 3s. 6d. had a note at the bottom: "Unless this cheque is signed by a majority of the parish officers, it will not be cashed." The cheque was signed by one of the officers while it was for £1 3s. 6d. It was altered to £3 3s. 6d., & when cashed by the treasurer had the signatures of a

majority of the officers to it:—*Held*: if the cheque was fraudulently altered when it had only one signature to it, there was no forgery, as it was then an incomplete instrument.—*R. v. TURPIN* (1849), 2 Car. & Kir. 820.

**100. — 7 & 8 Geo. 4, c. 29, s. 2.]**—A., in consequence of seeing an advertisement, applied to B. to raise money for him. B. said he would procure him £5,000, & produced from his pocket-book ten blank 6s. bill stamps, across each of which A. wrote "accepted payable at P. & Co., 189, Fleet Street, London," & signed his name. B., who was present, took up the stamps, & nothing was said as to what was to be done with them. Afterwards, bills of exchange for £500 each were drawn on the stamps, & B. put them into circulation:—*Held*: the stamps, with the acceptances thus written upon them, were not "bills of exchange."—*R. v. HART* (1833), 6 C. & P. 106.

*Annotations:—Distd. R. v. Bowerman*, [1891] 1 Q. B. 112. *Refd. Stoessiger v. S. E. Ry. Co.* (1854), 3 E. & B. 549. *Mentd. R. v. Smith* (1852), 5 Cox, C. C. 533.

**101. — Carriers Act, 1830 (c. 68), s. 1.]**—An instrument, bearing a bill of exchange stamp, was in the following form: "Three months after date pay to me £11 10s. value received. To C., etc.," & written across it was an acceptance by C. The intention was that G., a creditor of C., should put his name to the instrument as drawer:—*Held*: the instrument was not a bill, note, or security for money, within the above sect.—*STOESSIGER v. SOUTH EASTERN RY. CO.* (1854), 3 E. & B. 549; 23 L. J. Q. B. 293; 23 L. T. O. S. 65; 18 Jur. 605; 2 W. R. 375; 2 C. L. R. 1595; 118 E. R. 1248.

*Annotations:—Apprvd. Goldsmid v. Hampton* (1858), 5 C. B. N. S. 94. *Fold. M'Call v. Taylor* (1865), 19 C. B. N. S. 301. *Apprvd. R. v. Harper* (1881), 7 Q. B. D. 78, C. C. R. *Refd. R. v. Danger* (1867), Dears. & B. 307, C. C. R.; *Ex p. Swan* (1859), 7 C. B. N. S. 400; *Harvey v. Cane* (1876), 34 L. T. 64; *Baxendale v. Bennett* (1878), 3 Q. B. D. 525, C. A.; *R. v. Bowerman*, [1891] 1 Q. B. 112, C. C. R.

**102. — & payee's name inserted.]**—An instrument in the form of a bill of exchange, addressed to & accepted by deft., but without the names of either a payee or drawer, is neither a bill of exchange nor a promissory note, but only an inchoate instrument.—*M'CALL v. TAYLOR* (1865), 19 C. B. N. S. 301; 6 New Rep. 207; 34 L. J. C. P. 365; 12 L. T. 461; 11 Jur. N. S. 529; 13 W. R. 810; 114 E. R. 803.

*Annotations:—Apprvd. R. v. Harper* (1881), 7 Q. B. D. 78, C. C. R. *Refd. R. v. Bowerman* (1890), 60 L. J. M. C. 13, C. C. R. *Mentd. Harvey v. Cane* (1876), 34 L. T. 64.

Inchoate instruments generally, see Part VII. *post*.

**103. Evidence of drawing or making—Payment of money into court.]**—Payment of money into ct. on the whole declaration, in an action on a bill of exchange, is such an admission of the validity of the bill, as to prevent the necessity of proving the handwriting of the drawer.—*GUTTERIDGE v. SMITH* (1794), 2 Hy. Bl. 374; 126 E. R. 603.

**98 l.** drawer—Bill signed until  
ment without a drawer's was  
in the form of a bill of It  
was signed by a person  
:—*Held*: the not  
drawn by not a

completed bill of exchange, but  
evidence of acceptor's indebtedness to  
the exors. of the person to whom  
had delivered it.—*LAWSON'S*  
*TORS v. WATSON*, [1901] S. C.  
*SCOT*.

*Evidence of drawing or*

*admission.]*—Deft. sued as  
maker of a note by indorser, had  
before the indorsement admitted his  
making to pltf. & induced him to take  
it:—*Held*: the subscribing witness  
need not be called, as deft. was

R.

Annotations.—*Appl. Gullod v. Nock* (1795), 1 Esp. 347.  
*Mentd. Bennett v. Fr* (1801), 2 Bos. & P. 550; *Anderson v. Shaw* (1825), 3 Bing.

104. — Acceptance by drawee.]—In an action against the drawers of a bill of exchange, drawn by a firm upon one partner, if it is proved that the bill was accepted by the drawee, that is of its having been regularly drawn.—

*r. PARKER* (1807), 1 Camp. 82, N. P.

—*Mentd. Hill v. Heap* (1823), Dow. & Ry. N. P. 57, N. P.; *Powles v. Page* (1846), 3 C. B. 16; *Caunt v.* (1849), 7 C. B. 400.

105. — Parol evidence—Of invariable way drawing between particular parties.]—If there one invariable mode in which bills of exchange drawn between particular parties, this may be proved by parol evidence, without any of the bills being produced.—*SPENCER v. BILLING* (1812), Camp. 310.

106. Indorsement—Action against payee as indorser.]—In an action against the payee of a promissory note, who was likewise the indorser:—*Held*: his indorsement was an admission of the handwriting of the maker.—*FREE v. HAWKINS* (1817), Holt, N. P. 550, N. P.

107. — — —.]—A declaration alleged that deft. made his bill of exchange, & directed the same to B., & required him to pay to deft.'s order £187 15s., & then indorsed the bill to plffs. It appeared that the bill had been drawn by F., & indorsed by deft. in blank, & having been delivered by deft. to F., was by him taken to a bank, of which plffs. were the managers, where it was received by them in renewal of another bill discounted by them, & drawn & indorsed by the same parties:—*Held*: proof of deft.'s being the indorser of the bill did not support the averment that he made the bill.—*BURMESTER v. HOGARTH* (1843), 11 M. & W. 97; 12 L. J. Ex. 178; 152 E. R. 730.

Annotation:—*Mentd. Matthews v. Bloxsome* (1864), 4 New Rep. 139.

Person who has seen surname only signed.]—The signature of a drawer of a bill of exchange may be proved by a person who has seen him write his surname only.—*LEWIS v. SAPTO* (1827), Mood. & M. 39, N. P.

Annotation:—*Reid. Doe v. Suckermore* (1836), 5 Ad. & El. 703.

109. — Person having seen signature by mark.]—An instrument executed by mark may be proved from inspection by a person who has

in respect of note given.]—In an action upon a promissory note evidence of the transaction in respect to which the note was given is admissible in support of the contention that a person whose name appears on the note as an endorsee was the real maker & had endorsed the note for accommodation of the

3 W. W.  
R.

Deft. as residuary legatee of her estate for a note red to been signed by him as She pleaded that

found signed gated

were appointed,

of the

view, L. C. J. 171; 15 L. C. R. —CAN.

1091. — Person having seen signature of maker.]—A banker who has discounted other notes signed by the alleged maker of a note sued on, may give opinion evidence as to the signature of such note.—*LANGLEY v. JORDNEY* (1913), 13 E. L. R. 135; 13 D. L. R. 563; *affd.* 13 E. L. R. 432; 15 D. L. R. 101.—CAN.

k. — Signature by mark.]—Where all co-obligants in a bill are dead, it is competent, to prove the genuineness of the signature of one of them by mark.—*CHAIKIN v.* (1832), 10 Sh. (Ct. of Sess.) SCOT.

l. — — — A promissory note executed by a person under the — — — man is valid though

seen the party so execute instruments.—*GEORGE v. SURREY* (1830), Mood. & M. 510, N. P.

110. Signature by agent sufficient.]—In an action on a promissory note, alleged to have been made by deft., "his own proper hand being thereunto subscribed," if it appear that deft.'s name was written by another person, with his authority, it is sufficient, & the allegation of deft.'s handwriting may be rejected as surplusage.—*BOOTH v. GROVE* (1828), 3 C. & P. 335; Mood. & M. 182, N. P.

111. Bill sent by agent to principal. Accepted by customer with blank for drawer's name—Bill kept but not filled up by principal.]—The traveller of a tradesman in London called on his employer's debtor in the country, & being unable to obtain cash, consented, at request of debtor, to take an acceptance for the amount, wrote the whole form of a bill except the name of the drawer, & sent it up to his employer, telling debtor he did not think it would be satisfactory. The employer kept the bill, but did not put his name to it as drawer. The traveller had no authority to sign bills, but was in the habit of sending them up without a drawer's name to prevent risk by loss:—*Held*: these facts did not amount to proof of the drawing of a bill, so as to prevent the creditor from recovering for his original demand before the instrument purporting to be a bill became due.—*VYSE v. CLARKE* (1832), 5 C. & P. 403, N. P.

— Plea to jurisdiction in Mayor's Court, London.]—A plea to the jurisdiction, in an action by *concessit solvere* in the Mayor's Ct., London, by the indorsee against the acceptor of a bill of exchange made payable at a banker's in London (but not specially), admits the drawing, but not that it took place within the City of London.—*SEWELL v. CHEETHAM* (1874), L. R. 9 C. P. 420; 43 L. J. C. P. 239; 38 J. P. 696; 22 W. R. 695.

113. Evidence against making—Proof that instrument not a note.]—A plea, to an action on a note, that deft. did not make it, is proved by giving in evidence a writing made contemporaneously, showing that it was not a note.—*WEEDON v. WOODBRIDGE* (1850), 13 Q. B. 470; 116 E. R. 1343.

Admissibility of evidence in actions on & in connection with negotiable instruments.]—See Part XXII., Sect. 11, sub-sect. 4, *post*.

not affixed his mark thereto.—*BALAYYA v. SUBBAYYA* (1917), 40 Mad. 117.—IND.

m. — — — Absence of person who saw signature.]—The signature of a cheque by means of a cross in the presence of another is valid & binding. The proof of the signature of such witness, may, after his death, be made by parol evidence.—*HIMBEAULT v. BANQUE D'HOCHELAGA* (1916), Q. B. 51 S. C. 143.—CAN.

n. — — — Proof of his handwriting.]—In *assumpsit* by the indorsee against the maker of a promissory note signed by mark in presence of a witness, the witness did not appear on *subpoena*:—*Held*: secondary evidence of his handwriting as subscribing witness was admissible.—*ROAN v. LARKIN* (1842), Arm. M. & O. 403.—IR.



## 22 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 1.—*Requisites common to bills of exchange*

#### SUB-SECT. 3.—MUST PROVIDE FOR PAYMENT ON DEMAND OR AT FIXED OR DETERMINABLE FUTURE TIME.

See 1882 Act, ss. 3, 11, 73, 83.

See, also, cases in Part XXV., Sect. 1, sub-sect. 1, post.

**114. Two months after ship paid off.]**—A promissory note to pay within 2 months after a ship was paid off:—*Held*: good.—ANDREWS v. FRANKLIN (1717), 1 Stra. 24; 93 E. R. 361.

*Annotations*:—*Consd.* Colehan v. Cooke (1742), Willes, 393; Dawkes v. Deloraine (1771), 2 Wm. Bl. 782. *Reid.* Barnewly v. Baldwin (1741), 7 Mod. Rep. 417; Evans v. Underwood (1749), 1 Wils. 262.

**115. At payment of ship.]**—On an action on a note: "I promise to pay L. £11 at the payment of the ship D. for value received":—*Held*: as to the contingency of the payment, the subsequent act of the payment of the ship made it certain.—LEWIS v. ORDE (1735), cited 1 Gilb. on Evid. by Lofft, 179; Cunningham's Bills of Exchange, 113.

*Annotations*:—*Reid.* Barnewly v. Baldwin (1741), 7 Mod. Rep. 417; Colehan v. Cooke (1742), Willes, 393.

**116. — — —.]**—A promissory note was in the following form: "I promise to pay to P., or order, £8 upon the receipt of his wages due from H.M.S. A., it being in full for his wages, & prize-money, & short allowance money for the ship":—*Held*: the note was good.—EVANS v. UNDERWOOD (1749), 1 Wils. 262; 95 E. R. 608.

**117. Thirty days after arrival of ship.]**—K., an East India captain, having borrowed money of R., in order to secure R., arranged with P. that K. should draw in favour of R. bills on C., P.'s agent in Calcutta, payable at 30 days after the arrival of the ship, which bills R. was to indorse to P. & P. was to negotiate on Calcutta upon K.'s consigning to C. goods to double the amount of the bill:—*Held*: supposing P. had an insurable interest in the bills, he could not recover upon a policy describing them as bills of exchange.

On the record it appears, that they were only payable at thirty days after the arrival of the ship, so that if the ship did not arrive the bills would never be paid. What plffs. proposed to insure was not a bill of exchange, but a right to recover money in case of the arrival of the ship (BEST, C.J.).—PALMER v. PRATT (1824), 2 Bing. 185; 9 Moore, C. P. 358; 3 L. J. O. S. C. P. 250; 130 E. R. 277.

**118. After ship sails.—To person advancing to seaman on advance note.—Advance partly in cash partly in goods.]**—The master of a vessel on the eve of sailing gave one of the seamen an advance note in the following form: "Ten days after the ship A. sails from L., the undersigned does promise & agree to pay to any person who shall advance to H. on this agreement £6, provided H. shall sail

in the ship from L." Pltf., an outfitter, gave the seamen in exchange for the note £3 5s. in cash, & £2 15s. worth of wearing apparel, but he stated that, if he had advanced the whole amount in cash, he would have charged a discount of 7½ per cent. The seaman having sailed with the vessel:—*Held*: the condition upon which the holder of the document was entitled to sue the maker, was substantially fulfilled by giving the seaman the amount in money & money's worth.—M'KUNE v. JOYNSON (1858), 5 C. B. N. S. 218; 28 L. J. C. P. 133; 4 Jur. N. S. 760; 141 E. R. 87; *sub nom.* M'KANE v. JOYNSON, 31 L. T. O. S. 165; 6 W. R. 658.

*Annotations*:—*Reid.* Cardiff Boarding Masters' Assn. v. Cory (1893), 9 T. L. R. 388; Rowlands v. Miller, [1899] 1 Q. B. 735.

**119. On day of maker's marriage.]**—A note made payable to A., or order, on the day of the drawer's marriage:—*Held*: not negotiable within 3 & 4 Anne, c. 9.—BARNESLY v. BALDWIN (1741), 7 Mod. Rep. 417; 87 E. R. 1328; *sub nom.* BEARDESLY v. BALDWIN, 2 Stra. 1151.

*Annotation*:—*Reid.* Colehan v. Cooke (1742), Willes, 393.

**120. Ten days after death of specified party.]**—A promissory note payable to A., or order, 10 days after the death of B., is assignable under 3 & 4 Anne, c. 9, & the indorsee may maintain an action upon it against the maker.—COLEHAN v. COOKE (1742), Willes, 393; 125 E. R. 1231.

*Annotations*:—*Consd.* Richards v. Richards (1831), 2 B. & Ad. 447. *Reid.* Storm v. Stirling (1854), 3 E. & B. 832; Yates v. Nash (1860), 8 C. B. N. S. 581.

**121. When infant comes of age on specified day.]**—A note of hand payable to an infant when he shall come of age, specifying the day, is a good note, as being an unconditional engagement.—GOSS v. NELSON (1757), 1 Burr. 226; 1 Keny. 498; 97 E. R. 286.

*Annotations*:—*Reid.* Robins v. May (1839), 3 Per. & Dav. 147. *Mentd.* Hanson v. Graham (1801), 6 Ves. 239; Doe d. v. Hunt v. Moore (1811), 14 East, 601.

See, generally, INFANTS & CHILDREN.

**122. When circumstances of drawer admit.]**—A promissory note to pay, when the circumstances of the drawer will admit without detriment to himself or family, creates no debt.—EX p. TOOTELL (1798), 4 Ves. 372; 31 E. R. 189.

**123. After notice or demand.]**—A promissory note was made payable with interest 12 months after notice:—*Held*: the time of payment was not contingent, for the note was made payable at a time which must be supposed would arrive.—CLAYTON v. GOSLING (1826), 5 B. & C. 360; 8 Dow. & Ry. K. B. 110; 4 L. J. O. S. K. B. 176; 108 E. R. 134.

*Annotations*:—*Mentd.* Re Dowman & Offley, Ex p. Dowman (1827), 2 Gl. & J. 241, L. C.; Re West, Ex p. Hooper (1834), 3 Deac. & Ch. 655; Re Browne & Wingrove, Ex p. Ador, [1891] 2 Q. B. 574, C. A.

**124. — — —.]**—Stat. Limitations is no bar to an action on a promissory note, payable "24 months

#### PART II. SECT. 1, SUB-SECT. 3.

**118 i. After ship sails.]**—A draft made payable 3 months after the vessel is not a bill of exchange, it depends upon a contingency.—v. RYANSON (1874), 1 Q. L. R. CAN.

**o. Promise to pay at one of dates.]**—A note named an alternative time for payment, 11 months

or 3 years & 3 months after date: a valid note, being payable at the latest day.—HOGG v. (1849), 5 U. C. R. 319.—CAN.

**p. At sale of goods.]**—"Due to R. £500, payable at sale of lumber marked P."—*Held*: not a note, being subject to a contingency.—RUSSELL v. WELLS (1839), 5 O. S. —CAN.

q. Note on date

**-Proviso for payment on demand.]**—A note made payable at a specified date, contained a proviso that if the maker should sooner dispose of or sell certain lands, mentioned & described in a memorandum on said note, which he then owned, the note should be payable on demand:—*Held*: the time for payment was certain.—ELLIOTT v. BEECH (1856), 3 Man. L. R. 213.—CAN.

after demand," if presented for payment within 6 years before the action commenced.—*THORPE v. BOOTH* (1826), Ry. & M. 388, N. P.

125. —.—.]—A document was in the following form: "W. lent to J. £19 19s. 11d. to receive 5 per cent. for same £19 19s. 11d., to pay on demand to W., giving J. 6 months' notice for same":—*Held*: a promissory note, & not an agreement.—*WALKER v. ROBERTS* (1842), Car. & M. 590.

126. What constitutes notice.]—A promissory note was payable 6 months after notice. Pltf. by letter begged debt. "immediately to make a satisfactory arrangement for payment of the amount," but the action was not brought for 6 months after that letter:—*Held*: (1) this was not a notice to pay immediately, but only to make a satisfactory arrangement immediately for paying when the time for payment should arrive; (2) the action was maintainable.—*SEAVILLE v. SCOTT* (1855), 26 L. T. O. S. 59.

127. —.—.]—A promissory note, dated Oct. 4, 1842, was payable at "6 months' notice." An action was brought on it in Oct. 1848, & the indorsement on the writ stated that on payment within 4 days proceedings would be stayed. The action was abandoned, & a formal notice to pay in 6 months was given in Jan. 1850. A suit was instituted by the payee in 1855, to which Stat. of Limitations was pleaded:—*Held*: neither the action nor the indorsement on the writ was sufficient notice to pay, according to the tenor of the note.—*MOORE v. PETCHELL* (1856), 22 Beav. 172; 52 E. R. 1073.

128. Promise to pay balance—No time for payment stated.]—An instrument was in the following form: "Received & borrowed of A. £30, which I promise to pay with interest, at the rate of 5 per cent. I also promise to pay the demands of the sick club at H. in part of interest, & the remaining stock & interest to be paid on demand to A. Witness my hand, etc., C.":—*Held*: not a promissory note, because the instrument engaged for the payment of "remaining stock & interest" at a time not fixed.—*BOLTON v. DUGDALE* (1833), 4 B. & Ad. 619; 1 Nev. & M. K. B. 412; 2 L. J. K. B. 104; 110 E. R. 589.

*Annotation*:—*Distd. Davies v. Wilkinson* (1839), 10 Ad. & El. 98.

129. Note payable by instalments—No time for payment stated.]—A paper was in the following form: "I, M., owe Mrs. E. £6, which is to be paid by instalments, for rent. Signed, M.":—*Held*: not a promissory note, as no time was stipulated for the payment of the instalments.—*MOFFAT v. EDWARDS* (1841), Car. & M. 16, N. P.

*Annotation*:—*Reid. Mitchell v. Westover* (1850), 15 L. T. O. S. 113.

130. —.—.]—An agreement, between pltf. & debt., for the sale of a lease, concluded with the

r. At happening of one of events.]—An obligation which may become due & payable, at the option of the promisee, upon the happening of any one of a number of events cannot be said to be a promise to pay "on demand or at a fixed or determined future time," & such document is not a promissory note.—*GARDINER v. MUIR*, [1917] 3 W. W. R. 1080; 10 Sask. L. R. 388; 38 D. L. R. 115.—CAN.

s. On completion of contract.]—An order by a contractor that a building

owner should "on completion of contract on building," pay to the order of A. \$400 was accepted by the owner *Held*: not a bill of exchange the time for payment was indennite.—*THOMSON v. HUGGINS* (1896), 23 A. R. 191.—CAN.

t. Order to pay on account of advance—No time of payment stated.]—An order directing a servant to pay at an uncertain time a sum of money to the payee on account of advance is not a cheque.—*BULLOCK v. DE* (1870), 2 N. W. 335.—IND.

following clause, signed by both parties: "Pltf. does, at the same time & place, lend to debt. £84 in cash, to be repaid by instalments":—*Held*: not a promissory note.—*MITCHELL v. WESTOVER* (1850), 15 L. T. O. S. 113; 14 Jur. 816.

131. —.— Effect of proviso as to giving time.]—A document, in the form of a joint & several promissory note by a principal debtor & a surety for £5 payable by instalments, with the proviso that, in case of default in payment of any of one of the instalments, the whole amount remaining unpaid should become due, concluded with the following clause: "Time may be given to either without the consent of the other & without prejudice to the rights of the holders to proceed against either party, notwithstanding time may be given to another":—*Held*: the document was not by reason of such clause an agreement requiring to be stamped as an agreement, but a good promissory note.—*YATES v. EVANS* (1892), 61 L. J. Q. B. 446; 66 L. T. 532; 50 J. P. 565; 36 Sol. Jo. 274, D. C.

*Annotation*:—*Apprvd. Kirkwood v. Carroll*, [1903] 1 K. B. 531, C. A.

132. —.—.]—Pltf. sued as indorsee of a document, described as a promissory note, which provided for payment of certain money by instalments, the whole to become due on default in payment of any one instalment, & contained the following clause: "No time given to, or security taken from, or composition or arrangements entered into with, either party hereto, shall prejudice the rights of the holder to proceed against any other party":—*Held*: the document was not a promissory note, & could not be sued on as such.—*KIRKWOOD v. SMITH*, [1896] 1 Q. B. 582; 65 L. J. Q. B. 408; 71 L. T. 423; 44 W. R. 480, D. C.

*Annotation*:—*Overd. Kirkwood v. Carroll*, [1903] 1 K. B. 531, C. A. The case of *Kirkwood v. Smith* was decided without any reference to the other sects. of 1882 Act, & cannot any longer be regarded as an authority (*LORD HALSBURY, C.*).

133. —.—.]—Pltf. sued as holder of a document described as a joint & several promissory note, which provided for the payment of certain money by instalments, the whole to become due on default in payment of any one instalment. It contained the following clause: "No time given to, or security taken from, or composition or arrangement entered into with, either party hereto shall prejudice the rights of the holder to proceed against any other party":—*Held*: the document was a valid promissory note.—*KIRKWOOD v. CARROLL*, [1903] 1 K. B. 531; 72 L. J. K. B. 208; 88 L. T. 52; 51 W. R. 374; 19 T. L. R. 253; 47 Sol. Jo. 316, C. A.

*See, also, Nos. 151 et seq., post.*

134. "Ninety days after sight or when realised." An order for a sum "payable 90 days after sight

On or about specified every succeeding month. in writing to pay to manager of A. a specified sum on before Oct. 15, & a similar sum monthly every succeeding month:—*Held*: "instrument was not a promissory as it was impossible to say for period it was to subsist or whether money mentioned in it was to payable only during the life of A. or for the whole life of J.—C.—AGRA SAVINGS BANK (1883), 5 All. 562.—IND.



## 24 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sects. 3 & 4.]*

or when realised," is not a bill of exchange, as the latter alternative makes the sum payable on a contingency.—*ALEXANDER v. THOMAS* (1851), 16 Q. B. 333; 20 L. J. Q. B. 207; 16 L. T. O. S. 387; 15 Jur. 173; 117 E. R. 906.

**135. Debenture payable at fixed date—Liable to be "drawn" earlier.]**—A debenture of a limited co., registered under Cos. Act, 1862, payable to bearer on a particular day in 1872, with interest in the meantime, but liable to be "drawn" & paid off before that time, is not a promissory note on account of its liability to be drawn & paid off before the time mentioned.—*CROUCH v. CREDIT FONCIER OF ENGLAND* (1873), L. R. 8 Q. B. 374; 42 L. J. Q. B. 183; 29 L. T. 259; 21 W. R. 946.

*Annotations:—*Consd. *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337, Ex. Ch.; *London & County Banking Co. v. London River Plate Bank* (1887), 20 Q. B. D. 232; *Mortgage Insce. Corp'n. v. L. R. Comrs.* (1888), 21 Q. B. D. 352, C. A.; *Bechuanaland Exploration Co. v. London Trading Bank*, [1898] 2 Q. B. 658; *Webb, Hale v. Alexandria Water Co.* (1905), 21 T. L. R. 572. *Reid. Goodwin v. Roberts* (1875), L. R. 10 Exch. 78; *Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank* (1890), 39 W. R. 449, C. A.; *Jones v. Coventry*, [1909] 2 K. B. 1029. *Mentd. Goodwin v. Roberts* (1876), 1 App. Cas. 476, H. L.; *Twycross v. Dreyfus* (1877), 5 Ch. D. 605, C. A.; *National Bank v. Silke* (1890), 63 L. T. 787, C. A.; *Dashwood v. Magniac*, [1891] 3 Ch. 306, C. A.; *Venables v. Baring*, [1892] 3 Ch. 527.

**136. Foreign government coupon payable at fixed date—Liable to be redeemed earlier.]**—A foreign govt. issued a series of instruments, described as "gold coupon treasury notes," each of which contained a promise to pay the amount of the note in gold to the bearer at a certain date 2 years from the date of issue, & attached to each note were coupons for the payment of the interest in gold, the interest being payable abroad, but at the option of the bearer in London. The notes were redeemable at par at any time before maturity at the option of the issuing govt. upon their giving 60 days' notice of their intention to redeem; they gave no security to the holder beyond the promise to pay the face amount of the note, & they were marketable, though not readily saleable, on the London Stock Exchange:—*Held*: the instruments were both promissory notes & marketable securities within Stamp Act, 1891 (c. 39).—*SPEYER BROTHERS v. INLAND REVENUE COMRS.*, [1908] A. C. 92; 77 L. J. K. B. 802; 98 L. T. 286; 24 T. L. R. 257; 52 Sol. Jo. 222, H. L.

### 4.—MUST PROVIDE FOR PAYMENT OF A CERTAIN IN MONEY.

1882 Act, ss. 3, 9.

—A document was in the terms: "Placed in my hands by my brother W. B. for investment the sum of £500 to be paid out of my estate when called on or at my death. T. B."—*Held*: not to be a promissory note as the time of payment was uncertain.—*BELL v. BELL* (1896), 4 S. L. T. 214.—SCOT.

### PART II. SECT. 1, SUB-SECT. 4.

a. "Sum certain"—"Amount of

A. requesting him to pay K. "the amount of my account furnished," & delivered it to K. On presentment of the order to A., he wrote on it rect for, say £75.—signing the i of his name:—*Held*: not a bill of KENNEDY v. ADAMS (1874).

d. — Amount subject to

1.)—An order was thus worded: pay £125, on account of p'ts. addressed to & accepted by A.:—*Held*: not a bill of exchange, the amount payable being dependent upon claim.—PERTH COUNTY COMRS.

*See, also, cases in Part XIII., Sect. sub-sect. 1,*

**137. "Require payment"—"Credit" person named.]**—Post Office money orders addressed to the Post Office, London, in the form: "Credit the person named in my letter of advice £5, & debit same to this office":—*Held*: warrants & orders for the payment of money.—*R. v. GILCHRIST* (1841), Car. & M. 224; 2 Mood. C. C. 233.

*Annotations:—Mentd. R. v. Charretie* (1849), 13 Q. B. 447; *R. v. Vanderstein* (1865), 10 Cox, C. C. 177, C. C. R.

*See, further, CRIMINAL LAW & PROCEDURE; POST OFFICE.*

**Credit in cash.]**—An instrument was in the following form: "S. Assurance Co. To the cashier. Fifty-three days after date, credit P. & Co., or order, with £500, claimed per 'C.' in cash, on account of this corp'n.—A. C., Managing Director":—*Held*: it was properly declared on as a bill of exchange.—*ELLISON v. COLLINGRIDGE* (1850), 9 C. B. 570; 15 L. T. O. S. 67; 137 E. R. 104; *sub nom. EDDISON v. COLLINGRIDGE*, 19 L. J. C. P. 268; 14 Jur. 869.

*Annotation:—Reid. Allen v. Sea, Fire, & Life Assce.* (1850), 9 C. B. 574.

**139. ———.]**—An instrument was issued by a co., completely registered pursuant to Cos. Act, 1844 (c. 110), in the following form: "S. Assurance Co.. To the cashier. Thirty days after date, credit A., or order, with £311 9s. 6d., claims per 'S.' in cash, on account of this corp'n.," & signed by two of the directors of the co.:—*Held*: a promissory note, & binding on the co.—*ALLEN v. SEA, FIRE, & LIFE ASSURANCE CO.* (1850), 9 C. B. 574; 19 L. J. C. P. 305; 15 L. T. O. S. 91; 14 Jur. 870, n; 137 E. R. 1015.

*Annotations:—*Consd. *R. v. Kay* (1870), L. R. 1 C. C. R. 257. *Mentd. Lindus v. Melrose* (1858), 27 L. J. Ex. 326.

**140. "Sum certain"—"All such money as my brother owes him"**—Amount of debt stated at end of bill.]—A bill was in the following form: "Memorandum, that I, T., do bind myself to J. to pay unto him all such money as my brother owes him." At the end of the bill underneath was written, "W., the brother of T., owed to J. £40." Pltf. in his declaration averred that W., deft.'s brother, then owed to him £40:—*Held*: by the averment the debt was sufficient, & judgment should be for pltf.—*MORGAN v. JOHNSON* (1597), Cro. Eliz. 561; 78 E. R. 806.

### Proportion of prize-money.]

"Please to pay to Y. all my proportion of prize-money due to me for services on board," figured in the name of a seaman on board the ship, is an order for payment of money or bill of exchange, the forgery whereof is a felony.—*R. v. MACKINTOSH* (1800), 2 Leach, 883; 2 East, P. C. 942.

*r. McGREGOR* (1862), 21 U. C. R. —CAN.

e. *Amount of freight to be appropriated of freight.]*—A. to a ship owner received a bill of exchange drawn by the captain of the vessel for the amount of the freight to be earned by the voyage on which she was then proceeding:—*Held*: the bill could not be treated strictly as a bill of exchange, but rather as an appropriation of the freight.—*BARTT v. LOVETT* (1871), 8 N. S. J.

142. — Promise to pay definite sum—& such other sums as should appear due from books.]—An instrument, by which the party promises to pay £65, & also such other sum as by reference to his books he owed to another with interest, cannot be considered as a promissory note, even as to the £65.—SMITH v. NIGHTINGALE (1818), 2 Stark. 375, N. P.

143. — — — & all fines, etc.]—A paper, consisting of a promise to "pay A., or order, £13, for value received, together with interest at 5 per cent. per annum, & all fines according to rule," is not a promissory note, on account of the introduction of the last words.—AYREY v. FEARNSIDES (1838), 4 M. & W. 168; 150 E. R. 1388; *sub nom.* AIREY v. FEARNSIDES, 1 Horn. & H. 202; 2 Jur. 596; *sub nom.* AIRY v. FEARNSIDES, 7 L. J. Ex. 288.

144. — — — Certain stipulations for payment of indefinite sum.]—A document that contains not only a promise to pay a defined sum of money, but also certain stipulations, under which, instead of the promisor paying that defined sum, there will be an undefined sum to be paid, is not a promissory note in the ordinary mercantile sense of the term.—MORTGAGE INSURANCE CORPN. v. INLAND REVENUE COMRS. (1888), 21 Q. B. D. 352; 57 L. J. Q. B. 630; 36 W. R. 833; 4 T. L. R. 710, C. A.

Annotations:—*Consd.* Smith v. Dean (1900), 69 L. J. Q. B. 331, D. C. *Reid.* Hodgkins v. Simpson (1908), 23 T. L. R. 53.

145. — Balance due.]—A., being indebted to B., & B. to C., B. by letter requested A. to pay C. the balance due to him, B., & stated that C.'s receipt should be a sufficient discharge:—*Held*: this was not a bill of exchange.—CROWFOOT v. GURNEY (1832), 9 Bing. 372; 2 Moo. & S. 473; 2 L. J. C. P. 21; 131 E. R. 655.

Annotations:—*Reid.* Best v. Argles (1834), 2 Cr. & M. 394; Hutchinson v. Heyworth (1838), 9 Ad. & El. 375; Rodick v. Gandell (1852), 1 De G. M. & G. 763. *Mentd.* Liversidge v. Broadbent (1859), 4 H. & N. 603.

146. — Pay proceeds of consignment—"About £2,000."—A. having consigned goods to

B., sent him the following order: "Pay to C. the proceeds of a shipment of goods, value about £2,000, consigned by me to you":—*Held*: the instrument would not be a bill of exchange, if the proceeds were not payable out of a particular fund, because the order was not for a specific amount (BAYLEY, J.).—JONES v. SIMPSON (1823), 2 B. & C. 318; 3 Dow. & Ry. K. B. 545; 2 L. J. O. S. K. B. 22; 107 E. R. 402.

Annotations:—*Mentd.* Crowfoot v. Gurney (1832), 2 Moo. & S. 473; Hutchinson v. Heyworth (1838), 9 Ad. & El. 375; Braybrooke v. Meredith (1843), 13 Sim. 271.

147. — Demands of sick club.]—An instrument was in the following form: "Received & borrowed of A. £30, which I promise to pay with interest, at the rate of 5 per cent. I also promise to pay the demands of the sick club at 11. in part of interest, & the remaining stock & interest to be paid on demand to A.":—*Held*: not a promissory note, for the amount of the sick club charges was uncertain.—BOLTON v. DUGDALE (1833), 4 B. & Ad. 619; 1 Nev. & M. K. B. 412; 2 L. J. K. B. 104; 110 E. R. 589.

Annotation:—*Consd.* Davies v. Wilkinson (1839), 10 Ad. & El.

148. — Discrepancy between words in body & figures in margin.]—A bill of exchange was drawn in words for £200 & in figures for £245, the stamp covering the larger amount:—*Held*: in such cases the words in the body of the bill ought to be followed, not the figures in the margin.—SAUNDERSON v. PIPER (1839), 5 Bing. N. C. 425; 8 L. J. C. P. 227; 132 E. R. 1103; *sub nom.* SANDERSON v. PIPER, 2 Arn. 58; 7 Scott. 408; 3 Jur. 773; *subsequent proceedings*, 5 Bing. N. C. 561.

Annotations:—*Appld.* Garrard v. Lewis (1882), 10 Q. B. D. 30. *Reid.* Baker v. Jubber (1840), 1 Man. & G. 212.

149. — — —.]—The figures in the margin of a bill are not an essential part of a bill of exchange, but merely an index or summary of the contents of the bill.—GARRARD v. LEWIS (1882), 10 Q. B. D. 30; 47 L. T. 408; 31 W. R. 475.

Annotations:—*Distd.* Macmillan v. London Joint

1. — Promise to pay definite sum—& costs.]—An instrument as follows, "I promise to pay £49 13s. 4d. & costs," is not a promissory note because not for a sum certain.—BENTLY v. JAMIESON (1862), 1 W. & W. 145.—AUS.

2. — — — Attorney fees.]—The inclusion in the amount payable of "10 per cent. attorney fees" makes the amount payable not a sum certain.—A. MACDONALD CO., LTD. v. DAHL, [1919] 2 W. W. R. 156; 46 D. L. R. 250.—CAN.

3. — — — & bank charges.]—A bill of exchange for \$1,288 plus all bank charges was drawn in favour of plts. In an action by the payee against the acceptor for the amount stated in the bill plus \$2 9s. for bank charges:—*Held*: not a good bill.—STANDARD BANK OF CANADA v. WILDEY, 1919 S. R. N. S. W. 384.—AUS.

4. — — — " & interest not stated.]—A promissory note for a sum certain " & interest" is valid, though the rate of interest contracted for is not mentioned.—BANK OF AUSTRALASIA v. BRILLAT (1845), Res. & Eq. Jud. 27.—AUS.

5. — — — A document granted for a certain sum, to be paid back with bank interest, is not a promissory note, extraneous evidence being necessary to determine

the exact sum due.—TENNETT v. CRAWFORD (1878), 15 Sc. L. R. 265.—SCOT.

6. — — — With interest that may accrue.]—"We jointly & severally bind ourselves, our heirs & successors to make payment of" a specified "sum together with any interest that may accrue thereon":—*Held*: the sum payable was not "certain" in the sense of Bills of Exchange Act, the rate of interest not being specified.—LAMBERTON v. AIKEN (1899), 37 Sc. L. R. 138.—SCOT.

7. — — — "With current rate of exchange."]—A writing whereby A. promised to pay to his own order £42, with current rate of exchange on B., is not a promissory note.—NASH v. (1860), 4 All. 479.—CAN.

8. — — — An instrument drawn by A. upon B., requesting him to pay to the order of A., \$400, with current rate of exchange on N., is not a bill of exchange. Neither is a custom among merchants to draw bills of exchange in this form, part of the *lex mercatoria*.—CAZZI v. KIRK (1860), 4 All. 543.—CAN.

9. — — — A document dated at N., promising to pay \$1040.23 at T., with the current rate of exchange on N.:—*Held*: not a promissory note it was a

written acknowledgment of a debt in the sum named.—WOOD YOUNG (1864), 14 C. P. 250.—CAN.

10. — — — With exchange.]—A promise to pay a certain sum "with exchange on N.":—*Held*: not a note, the amount being rendered uncertain by the uncertainty of exchange.—PALMER v. FAHNESTOCK (1859), 9 C. P. 172.—CAN.

11. — — — one-half per cent.]—An instrument purporting to be a promissory note, with the words "With exchange not to exceed 1 per cent.," is not a note.—BAXTON v. STEVENSON (1874), 23 C. P. 503.—CAN.

12. — — — Cheque not stating amount payable.]—The statement at length in the body of a cheque is an essential mode of expressing the sum for which the cheque is payable. Until this portion is filled in, the instrument is incomplete.—COMMERCIAL BANK OF AUSTRALIA, LTD. v. HULLS (1884), 10 V. L. R. 110.—AUS.

13. — — — No sum stated in body of note—Figures in margin only.]—A promissory note had the figures £50 in the margin, but no sum was stated in the body of the note:—*Held*: as between the original parties to it, a valid & complete note for £50, there was evidence to show that they had agreed it.—HARRIS v. ADY, 1 R.



## 26 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sect. 4.]**

Bank, [1917] 2 K. B. 439. *Mentd.* Herdman v. Wheeler, [1902] 1 K. B. 361.

**150. — Words in body ambiguous—Right to look at figures in margin.]—**Where the words in the body of a note are ambiguous, the figures at the bottom of the note may be looked at in construing them.—*HUTLEY v. MARSHALL* (1882), 46 L. T. 186, C. A.

**151. — Sum payable by instalments—First instalment not paid.]—**Deft. by bill sealed promised to pay £5 per year for 5 years. Debt brought on non-payment of the first £5:—*Held*: good.—*MARCH v. FREEMAN* (1693), 3 Lev. 383; 83 E. R. 742.

*See, now, 1882 Act, s. 9.*

**152. — Instalment overdue.]—**Indorsee of a note payable by instalments, may, before the last day of payment, declare for the part that has become due.—*ASHFORD v. HAND* (1738), Andr. 370; 95 E. R. 439.

*Annotation:—Reid.* Oridge v. Sherborne (1843), 11 M. & W. 374.

**153. — — — — —.]—**An action of debt will not lie on a promissory note payable by instalments, till the last day of payment be past.—*RUDDER v. PRICE* (1791), 1 Hy. Bl. 547; 126 E. R. 314.

*Annotations:—Expld.* Workman, Clark v. Lloyd Brazillero, (1908) 1 K. B. 988. *Mentd.* Bishop v. Young (1800), 2 Bos. & P. 78; Priddy v. Houbrey (1823), 1 B. & C. 674; v. Paddon (1835), 5 Tyr. 635.

When cause of action arises generally, *see* Part XXII., Sect. 3, *post*.

**154. — — — — —.]—**A promissory note, payable by instalments, is valid & negotiable within 3 & 4 Anne, c. 9.—*ORIDGE v. SHERBORNE* (1843), 11 M. & W. 374; 152 E. R. 849; *sub nom.* ORIDGE v. SHERBORNE, 12 L. J. Ex. 313; 1 L. T. O. S. 111; 7 Jur. 402.

*Annotations:—Consd.* Miller v. Biddle (1865), 13 L. J. 334. *Reid.* Carlon v. Kenealy (1843), 12 M. & W. 139.

**155. — — — — — To cease on death of payee.]—**By an instrument in writing, two debts jointly & separately promised to pay to pltf. or order £50 by instalments for value received, & it was declared that it was intended, by the receivers & givers of that note of hand, that all instalments should cease at pltf.'s death:—*Held*: the instrument was not a promissory note, as it created only a contingent liability.—*WORLEY v. HARRISON* (1835), 3 Ad. & El. 669; 5 Nev. & M. K. B. 173; 1 Har. & W. 126; 5 L. J. K. B. 17; 111 E. R. 568.

**156. — — — — — Whole to become payable on default.]—**Where a promissory note is payable by instalments, subject to a condition, that on default being made in payment of the first instalment, the

whole amount shall become immediately payable, the note is assignable within 3 & 4 Anne, c. 9, & on default being made by the maker in payment of the first instalment, an indorser is liable for the whole amount.—*CARLON v. KENEALY* (1843), 12 M. & W. 139; 13 L. J. Ex. 64; 2 L. T. O. S. 151; 7 Jur. 1115; 152 E. R. 1144.

*Annotation:—Consd.* Miller v. Biddle (1865), 13 L. T. 334.

**157. — — — — —.]—**A note was made in favour of A., payable by instalments, the whole amount to become payable upon default in payment of the first instalment:—*Held*: the note was a promissory note within 3 & 4 Anne, c. 9.—*MILLER v. BIDDLE* (1865), 13 L. T. 334; 11 Jur. N. S. 980; 14 W. R. 110.

**158. — — — — —.]—**Deft. gave pltf's. a bill of sale of personal chattels to secure repayment of a sum of money & interest, & at the same time, & as part of the same transaction, gave them his promissory note for the payment of the same sum & interest by instalments of the same amounts, & to be paid on the same days, as provided by the bill of sale. The promissory note also stipulated that in the event of any of the instalments falling into arrear, the whole amount outstanding should immediately become due & payable. In an action on the promissory note:—*Held*: the promissory note was good, & pltf's. were entitled to recover.—*MONEY ADVANCE CO. v. CATER* (1888), 20 Q. B. D. 785; 57 L. J. Q. B. 463; 59 L. T. 311; 4 T. L. R. 461, D. C.

— — — — —.]—If A. is to B. in £80, & gives a promissory note for £87 3s., payable by four quarterly instalments, being the amount of principal & interest to the time of the last instalment, & providing that in case default should be made in payment of any one instalment, the whole sum should become payable, A. is entitled to recover the whole of such sum, on default being made in payment of the first instalment, as it was a stipulation between the parties in nature of a penalty, & not a usurious contract or agreement.—*WELLS v. GIRLING* (1819), 1 Brod. & Bing. 447; 4 Moore, C. P. 78; 129 E. R. 795.

*Annotation:—Mentd.* Re Trye, Ex p. Gullebert (1838), 7 L. J. Bay. 25.

**160. — — — — — Amount of first instalment in maker's option.]—**Deft., on Apr. 25, 1872, promised in writing to pay to pltf. £170, with interest at 5 per cent., as follows: "The first payment, to wit, £40 or more, to be paid on Feb. 1, 1873, & £5 on the 1st day of each month following, until the note & interest should be fully satisfied. Upon default in payment of any of the instalments, the full amount then remaining due was to be forthwith payable":—*Held*: this was a valid promissory note.—*COOKE v. HORN* (1873), 29 L. T. 369.

*also, Nos. 131 et seq., ante; Part V., post.*

to pay  
[.]—A document, by which thirteen signatories promised to pay jointly to A., a blank amount, each of the signatories being responsible for his proportionate share of the liability, is not a promissory note complete & on the face of it.—*MORRIS & v. CRONIN* (1917), App. D. 513.

e. equal instalments, may be before maturity of the second nt.—*Re BABCOCK v. AYERS* 27 O.

—An action lies on a note payable by instalments as soon as the first day of payment is passed, but it lies only for the amount of the first instalment, each of them being considered a separate debt.—*CLARKIN v. MORRIS* (1820), 3 R. de L. 30.—

on default—Provision for reduction of payment.]—An instrument in the usual form of a promissory note contained an absolute & unconditional promise to pay a sum by instalments on specified days, with provisions for reduction of such sum if payment were made, & for the whole to become due on default in payment of any instalment:—*Held*: a good and valid promissory note.—*FIRST NATIONAL BANK OF IOWA CITY v. ROONEY* (1913), 24 W. L. R. 163; 11 D. L. R. 358.—CAN.

152  
first instalment due on  
note payable by three annual  
for the

to

161. — **Cheque drawn in francs.**]—A cheque "for 7,680 francs (Paris)" is a bill of exchange, being for a sum of money certain or which can be made certain within 1882 Act, s. 9 (1) (d).—*COHN v. BOULKEN* (1920), 36 T. L. R. 767; 64 Sol. Jo. 636.

See, further, cases in Part XIII., Sect. 11, subsect. 1, *post*.

162. **In money—Word "pounds" omitted.**]—A counterfeit bank note without the water mark:—*Held*: a forged promissory note for the payment of money within 2 Geo. 2, c. 25, & 31 Geo. 2, c. 22, though the word "pounds" was omitted in the body of it, which was supplied by the "£ Fifty" in the margin.—*ELLIOTT'S CASE* (1777), 2 East, P. C. 951.

—A bill of exchange for twenty-five, seventeen shillings & three-pence, is a bill of exchange for twenty-five pounds, seventeen shillings & three pence, & may be declared on as such.—*PHIPPS v. TANNER* (1833), 5 C. & P. 488, N. P.

164. — **Word "pounds" transposed.**]—A cheque, in which the order of the words is transposed, *e.g.*, "pay A. seventeen or bearer pounds," is still a cheque & an order for the payment of money, for the forgery of which an indictment will lie.—*R. v. BOREHAM* (1847), 9 L. T. O. S. 24; 11 J. P. 217; 2 Cox, C. C. 180.

a. **In money—Promise to pay in Canada bills.**]—"Due J. G., or bearer, \$162 in Canada bills payable 14 days after date," etc.:—*Held*: not a note; for such bills, though currency, were not specie or money.—*GRAY v. WORDEN* (1870), 29 U. C. R. 535.—CAN.

b. **"Bankable currency."**  
*Qu.*: whether a note for a stated sum "payable in bankable currency" was a promissory note; but if not, it came within 30 Vict. c. 34 as being payable "otherwise than in money."—*DUNN v. ALLEN* (1884), 24 N. B. R. 1.—CAN.

c. — **With current funds.**]—*Qu.*: whether an instrument purporting to be a bill of exchange, payable in N., "with current funds," if it mean other than lawful money of the United States, is a bill of exchange.—*STEPHENS v. BERRY* (1885), 15 C. P. 518.—CAN.

d. — **"In currency."**]—It is no objection to the validity of a promissory note that it is for payment in currency. Currency means "United States Currency," when the note is payable in the United States.—*WALLACE v. SOUTHER* (1888-9), 16 S. C. R. 717.—CAN.

e. — **Foreign currency.**]—a note made in Canada payable in U.S.A. current funds, was not a promissory note.—*BETTIS v. WELLES*, 30 U. C. R. 23.—CAN.

—A note made in Canada for a certain number of dollars "payable in United States currency" is a promissory note.—*ST. STEPHEN BRANCH RY. Co. v. BLACK* (1870), 2 Han. 139.—CAN.

—A note made in Canada, promising to pay V. or order at C., \$893, American currency:—*Held*: a good promissory note.—*THIRD NATIONAL BANK OF CHICAGO v. COSBY* (1877), 41 U. C. R. 402.—CAN.

h. — **Value at time of maturity—Pleading.**]—To a declaration on notes, deft. pleaded that the

notes were signed & entered into in U.S.A., to be paid when due in U.S. currency, & alleged a tender by deft. before action of lawful money of C., which was at the time aforesaid equal to plff.'s claim & a refusal by plff. to accept same:—*Held*: plea bad; (1) for alleging the amount tendered to have been equal to plff.'s claim on the day of tender, before action brought, instead of at the time of the maturity of the notes, with subsequent interest, etc.; (2) for alleging that the amount tendered was equal to plff.'s claim, instead of "equal in value to a certain sum of U.S. currency."—*WHITE v. BAKER* (1864), 15 C. P. 292.—CAN.

— **Sufficiency of tender.**]—Deft. by his promissory note made in N., promised to pay plff. on demand £6 currency in specie, & on demand made for payment, tendered to plff. in discharge, 5 gold sovereigns which plff. refused to accept, claiming to be paid in silver dollars at the rate of 5s. each:—*Held*: the tender was not a good legal tender nor sufficient in discharge in law of the sum claimed under the note. By the law of tender, sterling money could not be tendered in discharge of demands in currency until their value in respect of one another was fixed & determined by law.—*BROOKING v. THOMAS* (1854), 4 Nfld. L. R. 1.—NFLD.

i. — **—**]—In an action on a promissory note payable to bearer made & dated in N.Y. it appeared that both maker & creditor were domiciled in N.Y. but plff. resided in Canada:—*Held*: the note being payable to bearer, the maker must be held to have agreed to pay in currency of the place where the bearer resided, & a tender of payment in greenbacks was insufficient.—*McCoy v. DINNEEN* (1864), 8 L. C. J. 339.—CAN.

—Deft. sued for the balance of certain promissory notes for different amounts payable in "German money," tendered the amount less the exchange, which

**Promise to pay in good East India Company bonds.**]—A promise to pay £300 to B. or order in three good East India bonds, is not a note within 3 & 4 Anne, c. 9:—*ANON.* (1745), Bull. N. P. 7th ed. 272, b.

166. — **Promise to pay in bank notes—Or bills on London.**]—A promissory note of the Douglas & Isle of Man Bank, was in the following form: "We promise to pay the bearer on demand, £1 British in bank notes or bills on London":—*Held*: a negotiable note.—*BOARDMAN v. QUAYLE* (1857), 11 Moo. P. C. C. 223; 30 L. T. O. S. 1; 5 W. R. 799; 14 E. R. 680, P. C.

**Promise to pay money—& deliver horse.**]—A promise to pay money & do some other thing, *e.g.* to deliver a horse, is not within 3 & 4 Anne, c. 9.—*MOOR v. VANLUTE* (1715), Bull. N. P. 7th ed. 272, b.

**& wharf.**]—*Held*: a note to deliver up horses & a wharf, & pay money at a particular day, could not be counted on as a note.—*MARTIN v. CHAUNTRY* (1747), 2 Stra. 1271; 93 E. R. 1175.

Annotation:—*Apprvd.* *Follett v. Moore* (1849), 1 Exch. 410.

169. — **— & arrange to set off.**]—An instrument was in the following form: "I agree to pay D. £695 at four instalments, *viz.* the first on," etc. "being £200," & so on, "three

was in favour of English money. The previous part payment had been accepted in English money:—*Held*: the tender was sufficient.—*VAN NIEKERK v. LE RICHE*, 24 S. C. 31; 17 C. T. R. 28.—S. AF.

n. — **Meaning of foreign coin—Pleading.**]—A declaration stated that deft. promised to pay 200 louis current money, "meaning thereby £200" of lawful money of Canada:—*Held*: the declaration was good although it extended the meaning of "louis."—*GIBB v. MORISSETTE* (1847), 4 U. C. R. 205.—CAN.

— **tender**  
*Held*: the words "payable in legal tender money" add no meaning to a note that would not be given if, if such words were omitted.—*NORTH-WESTERN NATIONAL BANK v. JARVIS* (1883), 2 Man. L. R. 53.—CAN.

167 i. — **Promise to pay money—Or goods.**]—A writing addressed to A. requesting him to pay B. £25, half cash & half goods, is not a bill of exchange.—*MELVILLE v. BEDELL* (1832), 1 N. B. R. (Chp.) 349.—CAN.

payable in cash or goods comes within the meaning of 4 Vict. c. 4.—*BURNHAM v. WATTS* (1844), 2 Kerr, 377.—CAN.

iii. — **— Tender of**  
—*TURNER v. CRANE* (1832), B. Dig. 369.—CAN.

167 iv. — **— Or mortgage.**]—A promise to pay "in cash or mtgc. upon real estate," is not a note, not being an absolute promise to pay money; & it does not become a note by the maker's election to pay in U. C. R. 45.—CAN.

167 v. — **— & deliver goods.**]—A document which provides for something to be done by the maker in addition to the payment of money, *viz.* the delivery of goods, is not a promissory note.—*TRAVIS v. FORBES* (1907), 2 E. L. R. 380; 41 N. S. R. 1.—CAN.



## 28 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Sect. 1. common to bills of exchange, promissory notes: Sub-sects. 4 & 5.]

others, the four amounting to £600, "the remainder, £95, to go as a set-off for an order of R. to T., & the remainder of his debt owing from D. to him":—*Held*: (1) not a promissory note, for such note must be entire, & the above instrument contained a promise to pay, joined with an agreement for something else; (2) it was good evidence of an agreement to pay, in consideration of being found indebted on a statement of account, though no consideration was expressly stated on the instrument itself.—*DAVIES v. WILKINSON* (1839), 10 Ad. & El. 98; 2 Per. & Dav. 256; 8 L. J. Q. B. 228; 3 Jur. 405; 113 E. R. 38.

170. ——— & to give life policy & lease of house.]—Deft. lent T. £500, & received from him a document, whereby he promised to pay deft., or his order, on demand £500 with 7 per cent. interest, & also to give deft. a life policy, & the lease of a house:—*Held*: the above document was not a promissory note, as it contained a promise to pay money, & also to do another act.—*FOLLETT v. MOORE* (1849), 4 Exch. 410; 19 L. J. Ex. 6; 14 L. T. O. S. 158; 154 E. R. 1272.

Annotation:—*Mentd.* Bond v. Bell (1857), 4 Drew.

171. ——— & make arrangements as to balance.]—Deft. signed a document, which ran as follows: "In consideration of, etc., I hereby undertake to pay £17 9s. 9d. by July 9, 1908, & to make immediate arrangements with regard to the balance of £550":—*Held*: the document was not a promissory note, as it contained a promise to pay money & other stipulations as well.—*HODGKINS v. SIMPSON* (1908), 25 T. L. R. 53.

Annotation:—*Mentd.* Ladbroke v. Buckland (1908), 25 T. L. R. 53.

172. ——— Or Bank of England notes.]—Promissory notes payable not in money, but in money or Bank of England notes:—*Held*: not promissory notes within 3 & 4 Anne, c. 9, & 7 Anne, c. 25, s. 3.—*Re SEATON, Ex p. IMESON* (1815), 2 Rose, 225, L. C.

Annotation:—*Mentd.* Re Seaton, Ex p. Davison (1817), Buck 31, L. C.

Bill payable with interest.]—See Part XIII., Sect. 11, sub-sect. 2, *post*.

### 5. MUST PROVIDE FOR PAYMENT TO OR TO ORDER OF SPECIFIED PERSON OR TO BEARER.

See 1882 Act, ss. 3, 7, 83.

173. No payee named—Interest warrant.]—A parated interest warrant was in the following terms: "The Governor & Co. of Copper Miners in England. Warrant for £12 10s. for half a year's

interest on Debenture No. 5252 due Jan. 15, 1849. W. I., Secretary":—*Held*: not a promissory note, since it wanted the essential character of a promissory note, seeing that there was not the name of any person mentioned in it as payee.—*ENTHOVEN v. HOYLE* (1853), 13 C. B. 373; 21 L. J. C. P. 100; 18 L. T. O. S. 317; 16 Jur. 272; 138 E. R. 1243, Ex. Ch.

Annotation:—*Mentd.* Re Queensland Land & Coal Co., Davis v. Martin, [1894] 3 Ch. 181.

174. ——— Debenture blank at time of signing.]—Pltfs. advanced money to deft. upon the security of certain promissory notes or debentures, in the following form: "The Governor & Co. of Copper Miners in England promise to pay to E., or order, £500, value received, & further to pay to the holder of the warrants annexed on presentment thereof as they shall fall due, interest on the £500, at the rate of 5 per cent. *per annum*." When the seal of the corp'n. was affixed to such documents, there was a blank left for the name of the payee. At the time of depositing them with pltfs., deft. filled up the blanks with the words "E., or order," & endorsed them "E." Pltfs. having brought *assumpsit*, declaring specially upon the debentures:—*Held*: the instruments declared on were not promissory notes.—*ENTHOVEN v. HOYLE* (1853), 13 C. B. 373; 21 L. J. C. P. 100; 18 L. T. O. S. 317; 16 Jur. 272; 138 E. R. 1243, Ex. Ch.

Annotation:—*Mentd.* Re Queensland Land & Coal Co., Davis v. Martin, [1894] 3 Ch. 181.

175. ——— Effect of "to bearer" omitted.]—A promissory note need not name any payee; if there is in fact a promise to pay, & the instrument is handed to another person, it is to be treated as payable to bearer, though the words "to bearer" are omitted.—*DAUN & VALLENTIN v. SHERWOOD* (1895), 11 T. L. R. 211.

176. Receipt acknowledged from specified person.]—An instrument was in the following form: "I do acknowledge that C. has delivered me all the bonds & notes for which £400 were paid him on account of S., & that C. delivered me G.'s receipt & bill on me for £10, which £10 & £15 5s. balance due to C. I am still indebted, & do promise to pay":—*Held*: a promissory note.—*CHADWICK v. ALLEN* (1726), 2 Stra. 706; 93 E. R. 797.

Annotations:—*Follid.* Green v. Davies (1825), 4 B. & C. 235. *Apprvd.* Brown v. De Winton (1848), 6 C. B. 336.

177. ———.]—An instrument was in the following form: "Received of A. £100, which I promise to pay on demand, with lawful interest":—*Held*: a promissory note.—*GREEN v. DAVIES* (1825), 4 B. & C. 235; 1 C. & P. 675; 6 Dow. & Ry. K. B. 306; 3 L. J. O. S. K. B. 185; 107 E. R. 1046.

Annotations:—*Distd.* Wise v. Charleton (1836), 2 Har. & W. 49. *Follid.* Shrivell v. Payne (1840), 8 Dow. 441. *Apprvd.* Brown v. De Winton (1848), 6 C. B. 336. *Mentd.* Anon. (1827), 5 L. J. O. S. K. B. 76; Brown v. Dean (1833), 2 Nev. & M. K. B. 316. Ashling v. Boon, [1891] 1 Ch. 668.

to pay  
chattels—Effect of non-delivery.]—A for the of a certain sum in a money debt the time for delivering the articles has elapsed.—*STEVENS v. HOPPER* (1849), 1 All. 394.—CAN.

1. ——— Promise to pay in ——— Six months after date, we to pay to J. \$400. The above note is to be paid in merchantal If not so paid within the time, then is t

*Held*: not a note.—*BOULTON v. JONES* (1860), 19 U. C. R. 517.—CAN.

u. ——— Promise to pay in work.)—An agreement to pay a certain sum in carpenter's or joiner's work, such as might be required, cannot be declared on as a note.—*Downs v. McNAMARA* (1847), 3 U. C. R. 276.—CAN.

### PART II. SECT. 1, SUB-SECT. 5.

178. No payee named—Effect

"to bearer" omitted.]—An instrument in the form of a promissory note which names no payee & is not payable to bearer is not a promissory note.—*MACDONALD v. MOFFATT* (1868), 5 W. W. & A. B. 193.—AUS.

a. ———.]—A letter was written by an exor. to the father of certain legatees, promising to pay the legacy to the children:—*Held*: not a promissory note, as no payee was named.

So. Jur. 580.—SCOT.

**178. Cheque payable to cash.]**—It is usual to make cheques payable to "cash," when it is wished that they shall be paid at the counter, & not go through the clearing-house (BRAMWELL, B.).—*KEY v. MATHIAS* (1862), 3 F. & F. 279, N. P.

*Annotations:—Mentd.* Whistler v. Foster (1863), 14 C. B. N. S. 248; Austin v. Bunyard (1864), 4 F. & F. 253; Bull O'Sullivan (1871), L. R. 6 Q. B.

**Payable to order of named person.]**—A bill of exchange payable "to the order of A." is the same as if it were payable "to A. or order."—*v. ORMSTON* (1715), 10 Mod. Rep. 286; 88 E. R. 731.

**180. Payable to named person—& his order.]**—A bill of exchange payable to a man & his order, or to his order only, is one & the same.—*FISHER v. POMFRET* (1697), 12 Mod. Rep. 125; Carth. 403; 88 E. R. 1210.

*Annotation:—Reid.* Edie v. East India Co. (1761), 2 Burr. 1216.

**181. — "To his order" omitted.]**—A promissory note payable to pltf., omitting "to his order":—*Held*: good.—*MOORE v. PAINE* (1736), Lee temp. Hard. 288; 95 E. R. 186.

**182. — —.]**—A note to pay A. for value received is within 3 & 4 Anne, c. 9, though without the word "order."—*SMALLWOOD v. ROLFE* (1713), Sel. Cas. on Evidence, 18.

**183. — Neither to order nor bearer.]**—A promissory note payable to A., without adding "or his order, or to bearer," is a legal note.—*SMITH v. KENDALL* (1794), 6 Term Rep. 123; 1 Esp. 230; 101 E. R. 469.

*Annotations:—Reid.* Plimley v. Westley (1835), 2 Bing. N. C. 249; Miller v. Biddle (1865), 11 Jur. N. S. 980.

**184. — —.]**—A note was made in favour of A. simply, & not either to order or bearer:—*Held*: the note was a promissory note within 3 & 4 Anne, c. 9.—*MILLER v. BIDDLE* (1865), 13 L. T. 334; 11 Jur. N. S. 980; 14 W. R. 110.

**185. — As officers—Or their successors in office.]**—An instrument was in the following form: "On demand we promise to pay W. & O. stewardesses for the time being of the Society, or their successors in office, £64 with 5 per cent. interest for same value received":—*Held*: a valid promissory note.—*R. v. BOX* (1815), 6 Taunt. 325; 128 E. R. 1060.

*Annotation:—Distd.* Storm v. Stirling (1854), 3 E. & B. 832.

**186. — As lodge of Oddfellows.]**—A promissory note made payable to a number of persons

**180 i. Payable to named person—Or his order—Or to order of named person.]**—A note made payable to a person or his order, or to the order of a person, means the same thing.—*MYERS v. CAN.* (1849), 6 U. C. R. 421.—

**181 i. — "Or order" omitted.]**—A note payable to a named person is non-negotiable where, by mistake, it is not expressed to be payable to the order of the payee.—*HARVEY v. BANK OF HAMILTON* (1888), 16 S. C. R. 714; Cam. Cas. 129.—CAN.

**181 ii. — —.]**—A note payable to a named person is valid, although the words "or order" are omitted.—*DEERY (Br.) v. CHAM.* (1828), 1 Hud. & B. 433.—IR.

—The fact that a is made payable to

F., & not to F. or order, does not deprive it of negotiability.—*VAN HOFMAYS & WARREN v.* (1913), C. P. D. 244.—S. AF.

promissory note payable to B. with the words "or order" struck out, is a negotiable instrument.—*WHITT, RYAN & SONS v. VAN SCHALKWYK* (1913), C. P. D. AF.

—A promissory note made in 1871, payable to the order of a mutual insurance co., or its officers, is negotiable.—*MCARTHUR v. SMITH* (1877), 1 A. R. 276.—CAN.

of added.]—D. made notes payable to "J. S., trustee K's estate," without noticing in whose favour they were:—*Held*: the insertion of the words

associated together under the name of the "Temple of Peace United Lodge of Oddfellows" appears upon the face of it to be good.—*R. v. CL.* (1844), 4 L. T. O. S. 232; 1 Cox, C. C. 110.

**187. — Two payees of same name—Father & son—Son in possession of instrument.]**—Proof of a promissory note payable to A. generally is *prima facie* evidence of a promise to A., the father, & not to A., the son, the names being the same, but A., the son, although styled in the declaration A., the younger, bringing the action, & being in possession of the note, is entitled to recover upon it.—*SWEETING v. FOWLER* (1815), 1 Stark. 106, N. P.

*Annotation:—Folld.* Stebbing v. Spleer (1849), 8 C. B. 827.

**188. — — — —.]**—A payable to J. was indorsed by J. It appeared that there were two J.'s, father & son, & that the indorsement was in the son's handwriting:—*Held*: though the presumption was that J., the father, was the payee, it was rebutted by the fact of the note having been in the son's possession, & indorsed in his handwriting.—*STEBBING v. SPICER* (1849), 8 C. B. 827; 19 L. J. C. P. 24; 11 L. T. O. S. 253; 137 E. R. 733.

**189. — Payee incorrectly named—Evidence to identify payee.]**—Pltf. suing upon a promissory note, which purports to be payable to a person of a different name, may show by evidence that he was the person intended.—*WILLIS v. BARRETT* (1816), 2 Stark. 29, N. P.

**190. Payable to drawer's order.]**—An original bill payable to one & his order, is assignable afterwards to whomsoever it is indorsed, though the words "or his order" be omitted.—*MOORE v. MANNING* (1717), 1 Com. 311; 92 E. R. 1087.

*Annotations:—Apld.* Stone v. Rawlinson (1745), Willes, 559. *Apprvd.* Edie v. East India Co. (1761), 2 Burr. 1216; Brown v. De Winton, Gay v. Lander (1848), 6 C. B. 336. *Mentd.* Goodwin v. Roberts (1875), L. R. 10 Exch. 337, Ex. Ch.

**191. — —.]**—A bill of exchange payable to the order of A. is payable to A., without alleging any order made.—*SMITH v. MCCLURE* (1804), 5 East, 476; 2 Smith, K. B. 43; 102 E. R. 1153.

*Annotation:—Consd.* R. v. Birch (1852), Ball Ct. Cas. 56.

**192. — —.]**—A bill made payable to the order of the drawer, & by him delivered to pltf., cannot be treated as a promissory note drawn in favour of pltf., but an indorsement must be averred as well as delivery.—*PREVOT v. ABBOTT* (1814), 5 Taunt. 786; 128 E. R. 901.

K's estate" did not give any additional value or effect to the notes as negotiable instruments.—*BENNETT v. DOUGLAS* (1887), 6 N. Z. L. R. 201.—N.Z.

**189 i — Payee incorrectly named.]**—In an action on two promissory notes given to pltf. J. S. & Co. by defts. in payment for machinery, it appeared that the notes sued on were drawn payable to J. S. & Son, the evidence showed that pltf. were the parties to whom defts. intended to make the notes payable, & that defts. who had the benefit of the machinery had themselves made the mistake:—*Held*: defts. could not avail themselves of the misdescription to escape liability, & pltf. could

20 N. S. R. (8 R. & G.) 509; *affd.* S. C. R. 717.—CAN.



**Sect 1.—Requisites common to bills of exchange, and promissory notes; Sub-sect. 5.]**

**Payable to drawer.]**—A declaration stated a bill to be payable to pltf. ; the replication alleged it was payable to him or order :—*Held* : to be no departure.—**HOOPER v. MARSHALL** (1869), L. R. 5 C. P. 4 ; 39 L. J. C. P. 14 ; 21 L. T. 639.

**Annotation:—***Mentd. Hatch v. Hatch* (1872), 28 L. T. 506.

194. Payable to fictitious or non-existing person.]—In an action by indorsee against the acceptor of a bill of exchange, payable to B. & Co. & indorsed in that name, pltf. could not prove it to have been indorsed by any persons using that firm, but, on the contrary, his own witnesses said they believed it was indorsed by C., the drawer. It also appeared that there was a house of B. & Co. with whom C. had dealings, but it was proved that the bill had never been in their hands. It was admitted that the bill was a true one, & that deft. had regularly accepted it, but it was contended that the indorsement was fictitious, which was an essential part of pltf.'s title :—*Held* : names were often used of persons who never existed, & as deft. had enabled C. to do that by lending his acceptance, & had by so doing put the bill in circulation, it should not lie in his mouth to make an objection that he had nothing to do with it, & judgment should be for pltf. —STONE v. FREELAND (1769), 1 Hy. Bl. 316, n. ; 126 E. R. 187, N. P.

**Annotations:**—**Reid.** *Gibson v. Minet* (1791), 1 Hy. Bl. 569; *Bank of England v. Vagliano*, [1891] A. C. 107.  
**Mentid.** *Master v. Miller* (1791), 4 Term Rep. 320.

195. ----- Whether payable to bearer.]—*Qu.*: whether a bill drawn payable to a fictitious person, which was known to all the parties, is not in its legal operation payable to bearer, & may not be declared on as such.—*VERE v. LEWIS* (1789), 3 Term Rep. 182; 100 E. R. 522.

*Annotations.*—**Reid.** *Minot v. Gibson* (1789), 3 Term Rep. 481; *Vagliano v. Bank of England* (1889), 23 Q. B. D. 213, C. A. **Mentd.** *Wilson v. Barthorpe* (1837), Murp. & H. 81.

*See, now, 1882 Act, s. 7 (3).*

196. . . . .]—A bill purporting to be drawn by A. at Lima, upon B. at Liverpool, payable to the order of C., & indorsed by C. to D., & by D. in blank, was presented for acceptance to B., by a person who represented himself to be D. The drawing & indorsements were forgeries :—*Seemle* : the payee being a fictitious or non-existing person, the bill was to be taken to be a bill payable to bearer. — PHILLIPS v. IM THURN (1866), L. R. 1 C. P. 403 ; Har. & Ruth. 499 ; 35 L. J. C. P. 220 ; 14 L. T. 408 ; 14 W. R. 653 ; *earlier pro-* (1865), 18 C. 7. N. S. 694.

Notes:—Conrad. Vagliano v. Bank of England (1888),  
B. D. 103. Reid. Vagliano v. Bank of England  
B. D. 104. A.

**197. ——— Value received by drawer.]—Where a bill of exchange was drawn by debt. & others on debt. alone in favour of a fictitious person, which**

was known to all parties concerned in drawing the bill, & deft. received the value of it from the second indorser:—*Held*: a *bonâ fide* holder for a valuable consideration might recover the amount of it in an action against the acceptor for money paid, or money had & received.—*TATLOCK v. HARRIS* (1789), 3 Term Rep. 174; 100 E. R. 517.

**Annotations.**—**Ridd.** Gibson v. Minet (1791), 1 Hy. Bl. 569; Wilson v. Barthorpe (1837), Murp. & H. 81; Vagliano v. Bank of England (1889), 23 Q. B. D. 243. **Mentd.** Master v. Miller (1791), 4 Term Rep. 320; Hodgson v. Anderson (1825), 3 B. & C. 842; Wharton v. Walker (1825), 4 B. & C. 163; Cochrane v. Green (1860), 9 C. B. N. S. 448; British Homes Corpn. v. Patterson (1902), 86 L. T. 826.

---. **Indorser bound.**—An indorser is bound by his indorsement, though the bill is made to a fictitious payee.—*Re LIVESAY, Ex p. CLARKE* (1791), 2 Bro. C. C. 238 ; 29 E. R. 511, L. C.

199. — Fictitious name indorsed by drawer payable to his own order—Indorsed by drawer to innocent indorsee for value.]—If a bill of exchange be drawn in favour of a fictitious payee with the knowledge as well of the acceptor as the drawer, & the name of such payee be indorsed on it by the drawer with the knowledge of the acceptor, which fictitious indorsement purports to be to the drawer himself or his order, & then the drawer indorses the bill to an innocent indorsee for a valuable consideration, & afterwards the bill is accepted, but it does not appear that there was an intent to defraud any particular person, such innocent indorsee for a valuable consideration may recover against the acceptor as on a bill payable to bearer : *Seemle* : in such case, the innocent indorsee might recover against the acceptor as on a bill payable to the order of the drawer, or on a count stating the special circumstances.—GIBSON v. MINET (1791), 2 Bro. Parl. Cas. 48 ; 1 Hy. Bl. 569 ; 1 E. R. 784, H. L.

*Annotations*.—**Consd. Vagliano v. Bank of England** (1889), 23 Q. B. D. 243, C. A. **Reid. Bennett v. Farnell** (1807), 1 Camp. 130; **Addenda** 180 c, N. P.; *Ex p. Royal Bank of Scotland* (1815), 10 Ves. 310, L. C.; *Re Stein, Ex p. Royal Bank of Scotland* (1815), 2 Rose, 197, L. C.; **Beeman v. Duck** (1843), 11 M. & W. 231; **Ashpitel v. Bryan** (1864), 3 B. & S. 723, Ex. Ch.; **Vagliano v. Bank of England** (1888), 22 Q. B. D. 103. **Mentd. Bishop v. Hayward** (1791), 4 Term Rep. 470; **Master v. Miller** (1791), 4 Term Rep. 320; **Stone v. Marsh** (1827), 6 B. & C. 551; *Re Jones, Ex p. Jones* (1833), 3 Deac. & Ch. 525, Ct. of R. **Saunderson v. Piper** (1839), 5 Bing. N. C. 425; **White v. Spettigue** (1845), 13 M. & W. 603; *Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184; *Re Harris* (1864), 13 W. R. 275; **Chamberlain v. Young**, [1893] 2 Q. B. 206, C. A.

**200. — Or order.]—**A bill of exchange, payable to a fictitious payee or order, & indorsed in his name, by concert between the drawer & acceptor, is to be considered as a bill payable to bearer, in an action by an innocent indorsee for a valuable consideration, either against the drawer or acceptor of the bill.—**GIBSON v. HUNTER** (1793), 6 Bro. Parl. Cas. 235; 2 Hy. Bl. 187; 2 E. R. 1050; *subsequent proceedings* (1794), 6 Bro. Parl. Cas. 255, H. L.

as payable to bearer.—  
COPPER MINING Co. v. OGIER (1905),  
1 Tas. L. R. 156.—AUS.

199 l. indorsed  
by drawer.]—Deft. accepted a bill drawn by A. in favour of B., a fictitious person. A. passed the bill with B.'s name indorsed to C., who indorsed the bill to plff., who declared on the bill: he could recover.—DIXON v. (1788), Vern. & Scr. 465.—IR.

to an  
payable  
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against the maker as on a note, \_\_\_\_\_  
to bearer.—WILLIAMS v. NOXON (1853),  
10 U. C. R. 259.—CAN.

195 III. ——— Non-existent company.—Knowledge of maker.]—Deft. in 1904, gave a promissory note payable to the R. Co., but the co. was not then

It sued on the  
if deft. was aware of the non-  
of the co. at the time of  
making the note it might be treated

1.)—Where a note is payable to a fictitious payee, & not to his order or bearer, a person receiving it from a third party for value cannot

*Annotations* :-  
130,

Bennett v. Farnell (1807), 1 Camp. Stein, *Ex p.* Royal Bank of Scotland 197, L. C. *Mentd.* Bulkeley v. Butler 3. 434; Taylor v. Mosely (1833), 6 C. & P. Sewell v. Burdick (1884), 10 App. Cas. 74,

H. L.

**201. — Discounted with notice.]—**A person discounting a bill payable to a fictitious payee, for the benefit of the drawer, & with knowledge of the transaction, cannot recover against the acceptor.—HUNTER v. JEFFERY (1797), Peake, Add. Cas. 116, N. P.

*Annotation* :—*Reid.* Ashpitol v. Bryan (1863), 3 B. & S. 474. See, now, 1882 Act, s. 7 (3).

**202. — Or his order—Void.]—**A bill of exchange made payable to a fictitious person or his order, is neither in effect payable to the order of the drawer, nor to bearer, but is completely void.—BENNETT v. FARNELL (1807), 1 Camp. 130, N. P.

*Annotations* :—*Consd.* Ashpitol v. Bryan (1863), 3 B. & S. 474; Bank of England v. Vagliano, [1891] A. C. 107, H. L. *Reid.* Beeman v. Duck (1843), 11 M. & W. 251; Vagliano v. Bank of England (1889), 23 Q. B. D. 243, C. A.

**203. — Bill drawn in fictitious name—Payable to drawer's order.]—**Where a bill is drawn in the name of a fictitious person, payable to the order of the drawer, the acceptor is considered as undertaking to pay to the order of the person who signed as the drawer.—COOPER v. MEYER (1830), 10 B. & C. 468; L. & Welsb. 172; 5 Man. & Ry. K. B. 387; 8 L. J. O. S. K. B. 171; 109 E. R. 525.

*Annotations* :—*Consd.* Schultz v. Astley (1836), 2 Bing. N. C. 544. *Apld.* Beeman v. Duck (1843), 11 M. & W. 251. *Distd.* Phillips v. Im Thurm (1866), Har. & Ruth. 499. *Consd.* London & South Western Bank v. Wentworth (1880), 5 Ex. D. 96; Bank of England v. Vagliano, [1891] A. C. 107. *Reid.* Ashpitol v. Bryan (1863), 3 B. & S. 474.

**204. — Bill drawn & indorsed in name of deceased person.]—**C., who had been managing clerk to B., a deceased merchant, sold a part of B.'s personal estate to deft., with the consent of A., who claimed an interest therein, & by agreement between A., C., & deft., C., in the name of B., drew a bill of exchange for the price on deft., & in the like name indorsed it to A., who retained it till his death. Deft. accepted the bill after it had been so indorsed. After A.'s death, A.'s exor. put the bill in suit against deft., declaring on it as on a bill drawn & indorsed by B. The plea denied the indorsement by B.:—*Held*: in the circumstances, deft. was by his own agreement estopped from denying that the bill was indorsed as alleged.—ASHPITEL v. BRYAN (1864), 5 B. & S. 723; 11 L. T. 221; 122 E. R. 999, Ex. Ch.; *sub nom.* ASPITEL v. BRYAN, 33 L. J. Q. B. 328; *sub nom.* ASPHITEL v. BRYAN, 12 W. R. 1082.

*Annotations* :—*Consd.* Vagliano v. Bank of England (1889), 23 Q. B. D. 243. *Reid.* Brook v. Hook (1871), L. R. 6 Exch. 89; Garland v. Jacob (1873), L. R. 8 Exch. 216. *Mentd.* M'Canoe v. L. & N. W. Ry. Co. (1864), 34 L. J. Ex. 39.

**205. — Who is a "fictitious person"—Existing person never intended to have any rights under instrument.]—**The effect of 1882 Act, s. 7 (3), is that a bill may be treated as payable to bearer where the person named as payee, & to whose order the bill is made payable on the face of it, is

**205 i. — Who is a "fictitious person"—Payment not intended to conform to note.]—**Wherever the name, inserted as that of a payee in a bill or note, is inserted without any intention that payment shall only be made in conformity therewith, the payee is a fictitious person.—CITY BANK v. ROWAN (1893), 14 N. S. W. L. R. 127.—AUS.

**205 ii. — Existing person intended to have any rights under instrument.]—**A payee is fictitious though an existing person, if such person has no interest in the note, no right to indorse it or be paid upon it.—CITY BANK v. ROWAN (1893), 14 N. S. W. L. R. 127.—AUS.

iii. — Payee's

a real person but has not & never was intended by the drawer to have any right upon it or arising out of it; & this is so though the bill, so called, is not in reality a bill, but is in fact a document in the form of a bill manufactured by a person who forges the signature of the named drawer, obtains by fraud the signature of the acceptor, forges the signature of the named payee, & presents the document for payment, both the named drawer & the named payee being entirely ignorant of the circumstances.

A series of documents so manufactured were made payable at the acceptor's bank, & the amounts were paid over the counter to the forger or his agent by the bank *bond fide* & in pursuance of letters of advice signed by the acceptor, whose signature thereto was fraudulently obtained by the forger, a clerk in the employment of the acceptor:—*Held*: the bank was entitled to debit its customer, the acceptor, with the amounts, although paid to the forger or his agent, & not to a *bond fide* holder of the documents for value or to any person who could sue the acceptor upon them, on the ground that the named payee was a fictitious or non-existing person within the above sub-sect., & the documents might be treated as bills payable to bearer.—BANK OF ENGLAND v. VAGLIANO BROTHERS, [1891] A. C. 107; 60 L. J. Q. B. 145; 64 L. T. 353; 55 J. P. 676; 39 W. R. 657; 7 T. L. R. 333, H. L.; *reversing* N. C. *sub nom.* VAGLIANO BROTHERS v. BANK OF ENGLAND (1889), 23 Q. B. D. 243, C. A.

*Annotations* :—*Consd.* Clutton v. Attenborough, [1895] 2 Q. B. 306. *Expld.* Clutton v. Attenborough, [1895] 2 Q. B. 707, C. A. *Apld.* Clutton v. Attenborough, [1897] A. C. 90, H. L. *Consd.* Vinden v. Hughes, [1906] 1 K. B. 795. *Expld.* Macbeth v. North & South Wales Bank, [1906] 2 K. B. 718. *Consd.* Macbeth v. North & South Wales Bank, [1908] 1 K. B. 13, C. A. *Expld.* North & South Wales Bank v. Macbeth, North & South Wales Bank v. Irvine, [1908] A. C. 137, H. L. *Consd.* Kepitigalla Rubber Estates v. National Bank of India, [1909] 2 K. B. 1010. *Reid.* Lewes Sanitary Steam Laundry Co. v. Barclay (1906), 95 L. T. 444; It. v. Kennaway (1916), 86 L. J. K. B. 300, C. C. A.; Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A. *Mentd.* Robinson v. Canadian Pacific Ry. Co., [1892] A. C. 481, P. C.; Re English Bank of the River Plate, *Ex p.* Bank of Brazil, [1893] 2 Ch. 438; Re Budgett, Cooper v. Adams, [1894] 2 Ch. 557; Scholfield v. Londesborough, [1896] A. C. 514, H. L.; River Thames Conservators v. Smeed, Dean, [1897] 2 Q. B. 334, C. A.; Jenkins v. Coomber (1898), 47 W. R. 48; Priest v. Last (1903), 89 L. T. 33, C. A.; Holland v. Manchester & Liverpool District Banking Co. (1909), 14 Com. Cas. 241; Hall v. Hayman, [1912] 2 K. B. 5; Wimbly Sons v. Rosenberg, [1913] 3 K. B. 743, C. A.; Maclaren v. A.-G. for Quebec, [1914] A. C. 258, P. C.; Sanday v. British & Foreign Marine Inace., [1915] 2 K. B. 781, C. A.; Mac Connell v. Prill, [1916] 2 Ch. 57; London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777, H. L.; Quebec Ry. Light, Heat & Power Co. v. Vandry, [1920] A. C. 662, P. C.

**206. — S. drew a cheque payable to C., at the request of R., a co. promoter, in order that B. Co. might go to allotment on the minimum required capital being raised. C. otherwise S. was an existing person, but it was never intended that he should indorse the cheque, & it was only drawn to induce the co. to accept an application for shares in his name. B. Co. indorsed the cheque in C.'s name & sued S. on it:—**

*forged.]—*Cheques to order of named persons were obtained by S., who forged the names of the payees, indorsed his own name, & received payment of the cheques:—*Held*: the cheques were not made payable to fictitious payees.—AGRICULTURAL & LOAN ASSOCIATION v. FEDERAL (1881), 6 A. R. 192.—CAN.



## 32 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sect. 5.]*

*Held: C. was, quoad the transaction a fictitious person, & the cheque must be treated as payable to bearer.—EDINBURGH BALLARAT GOLD QUARTZ MINE CO., LTD. v. SYDNEY (1891), 7 T. L. R. 656.*

**207. — Person supposed to be real person.]—**A clerk employed in the account department of pltf.'s business, by fraudulently representing to them that work had been done on their account by B., induced them from time to time to draw cheques payable to the order of B. in payment for the pretended work. There was in fact no such person as B. The cheques when signed by pltf's. were sent by them to the account department for postage to the supposed payee, but the clerk, having obtained possession of the cheques, forged the indorsement of B. to them, & negotiated them with deft., who gave value for them in good faith, & the cheques were duly honoured by pltf's. bankers:—*Held: B. was not the less a "fictitious or non-existing person" within 1882 Act, s. 7 (3), because, at the time of drawing the cheques, pltf's. supposed him to be a real person, & the cheques must be treated as payable to bearer.—CLUTTON v. ATTENBOROUGH & SON, [1897] A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276; 13 T. L. R. 111, H. L.*

*Consd. Vinden v. Hughes, [1905] 1 K. B. 795; Macbeth v. North & South Wales Bank, [1908] 1 K. B. 13, C. A. Expld. & Distd. North & South Wales Bank v. Macbeth, [1908] A. C. 137, H. L.*

**208. — Real person intended to be payee.]—**Pltf's., market salesmen, had in their employ a confidential clerk & cashier, whose duty it was to fill up cheques payable to the order of various customers of pltf's. with the names of such customers & the amounts payable to them respectively, to obtain the signatures of pltf's. thereto, & then to post the cheques to the customers. During 1901 to 1903 the clerk made out twenty-seven cheques to the order of various customers, amounting in all to £487, obtained the signatures of pltf's. thereto, & misappropriated them, & having forged the indorsements, negotiated them with deft., who gave full value for them in good faith & obtained payment of them from pltf's. bankers:—*Held: in the circumstances it was impossible to come to the conclusion that pltf's., when drawing the cheques, had used the names of their customers by way of pretence only, & the payees were not "fictitious" persons within 1882 Act, s. 7 (3).—VINDEN v. HUGHES, [1905] 1 K. B. 795; 74 L. J. K. B. 410; 53 W. R. 429; 21 T. L. R. 324; 49 Sol. Jo. 351.*

*Annotations:—Consd. Macbeth v. North & South Wales Bank, [1908] 1 K. B. 13, C. A. Reqd. Macbeth v. North & South Wales Bank, [1908] 1 K. B. 13, C. A.*

**209. —.]—**W., by falsely representing to pltf. that he had agreed to purchase from K. certain shares then held by K. in a co., & that he had arranged to resell the shares at a profit, induced pltf. to agree to assist him in

financing the transaction. For such purpose pltf. drew a cheque on the C. Bank to K. or order for the amount of the purchase-money, which cheque was delivered to W., in order that he might hand it to K. in payment of the shares. W. forged K.'s indorsement to the cheque & paid it in to his own account with deft. bank, who credited him with the amount & collected the money from the C. Bank. W. had not agreed to buy any shares from K., & K. had at the time no shares in the co.:—*Held: as K. was an existing person designated by pltf. & intended by him to be the payee of the cheque, the payee was not a "fictitious person" within 1882 Act, s. 7 (3).—NORTH & SOUTH WALES BANK, LTD. v. MACBETH, NORTH & SOUTH WALES BANK, LTD. v. IRVINE, [1908] A. C. 137; 77 L. J. K. B. 464; 98 L. T. 470; 24 T. L. R. 397; 52 Sol. Jo. 353; 13 Com. Cas. 219, H. L.; affg. S. C. sub nom. MACBETH v. NORTH & SOUTH WALES BANK, [1908] 1 K. B. 13, C. A.*

*Annotations:—Mentd. Crumplin v. London Joint Stock Bank (1913), 109 L. T. 858; Morison v. London County & Westminster Bank, [1914] 3 K. B. 356, C. A.*

**210. Payable to our & each of our order.]—**To *assumpsit* on a promissory note, by which deft. & four other persons jointly & severally promised to pay £750 "to our & each of our order," deft. pleaded that the indorsement was made by him alone. Replication, that the indorsement was by deft. jointly with the other four:—*Held: the note when indorsed became certain, and the record showing that deft. had indorsed, enough appeared to warrant a judgment for pltf.—ABSOLON v. MARKS (1847), 11 Q. B. 19; 17 L. J. Q. B. 7; 10 L. T. O. S. 133; 11 Jur. 1016; 116 E. R. 381.*

**211. Payable to drawee's own order.]—**A document in the ordinary form of a bill of exchange, but requiring the drawee to pay to his own order, & purporting to be endorsed by the drawer & accepted by the drawee, cannot, in an indictment for forgery & uttering be treated as a bill of exchange.—*R. v. BARTLETT (1841), 2 Mood. & R. 362.*

**212. Payable to bearer.]—***Qu.: whether an action could be maintained on a note under seal to pay the bearer £100, by an averment that it was delivered to pltf. by the bearer.—SHELDEN v. HENTLEY (1681), 2 Show. 160; 89 E. R. 860.*

*Annotation:—Reqd. Goodwin v. Roberts (1875), L. R. 10 Exch. 337, Ex. Ch.*

**213. —.]—**Bills payable to bearer are negotiable, like other bills of exchange.—*GRANT v. VAUGHAN (1764), 1 Wm. Bl. 485; 3 Burr. 1516; 96 E. R. 281.*

*Annotations:—Reqd. Herrings v. Rothschild (1827), 4 Bing. 315; Keene v. Beard (1860), 8 C. B. N. S. 372; Bechuana-land Exploration Co. v. London Trading Bank, [1898] 2 Q. B. 658. Mentd. Tatlock v. Harris (1789), 3 Term Rep. 174; Brown v. Harraden (1791), 4 Term Rep. 148; Re Seaton, Ex p. Davison (1817), Buck. 31; Wookey v. Pole (1820), 4 B. & Ald. 1; Gill v. Oubitt (1824), 3 B. & C. 466; Snow v. Peacock (1826), 3 Bing. 406; Morgan v. nes (1830), 1 Tyr. 21; Goodwin v. Roberts (1875), R. 10 Exch. 337.*

*to be payer.]—*Pltf's. sent by post a crossed cheque drawn by them in favour of M. or order. P. intercepted the cheque & brought it to deft. bank, & having indorsed it first as M. & next as P., received payment of the amount of the cheque. In an action by pltf's. to recover the amount of the cheque as money had & received by it to & for the use of pltf's.:—*Held:*

the payee was not a "fictitious or non-existing person"—*TOWN & COUNTY CO., LTD. v. BANK OF IRELAND, LTD., [1917] 2 I. R. 118.*

*I. to "C. only."—*A note to "C. only" is not negotiable because it contains words an intention that it should not be transferable.—*CHANDLER v.*

*EDMONTON PORTLAND CEMENT CO., (1917), 1 W. W. R. 1408.—CAN.*

*G. or order for the use of M.]—*Pltf. declared on a cheque payable to G. or order: the note induced was payable to "G. or order, the use of M."—*Held: it was on according to its legal effect. v. COX (1870), 30 U. C. 363.—CAN.*

## PART II.—REQUIREMENTS OF FORM.

**214. — Note made in England—Transferable by delivery in foreign country.]—**A promissory note payable to bearer, made in England :—*Held* : by 3 & 4 Anne, c. 9, transferable by delivery in a foreign country.—*DE LA CHAUMETTE v. BANK OF ENGLAND* (1831), 2 B. & Ad. 385 ; 9 L. J. O. S. K. B. 239 ; 109 E. R. 1186.

*Annotations* :—*Refd.* Lang v. Smyth (1831), 7 Bing. 284 ; Jefferys v. Boosey (1854), 4 H. L. Cas. 819, H. L.

**215. — Cheque negotiable by indorsement.]—**A cheque on a banker, payable to bearer, is a negotiable instrument, & passes by indorsement, so as to entitle a holder to sue the indorser thereon, as in the case of a bill of exchange.—*KEENE v. BEARD* (1860), 8 C. B. N. S. 372 ; 29 L. J. C. P. 287 ; 2 L. T. 240 ; 6 Jur. N. S. 1248 ; 8 W. R. 469 ; 141 E. R. 1210.

*Annotations* :—*Apprvd.* M'Lean v. Clydesdale Banking Co. (1883), 9 App. Cas. 95, H. L. *Mentd.* Hopkinson v. Forster (1874), L. R. 19 Eq. 74 ; Currie v. Misa (1875), L. R. 10 Exch. 153.

**216. Payable to blank or order.]—**To constitute an order for payment of money there must be some payee, & a direction to pay to blank or order is not sufficient.—*R. v. RICHARDS* (1811), Russ. & Ry. 193.

*Annotation* :—*Refd.* R. v. Illidge (1849), 1 Den. 404, C. C. R.

**217. S. P. R. v. RANDALL** (1811), Russ. & Ry. 195.

*Annotation* :—*Refd.* R. v. Illidge (1849), 1 Den. 404, C. C. R.

**218. Payable to . . . order.]—**An instrument made payable to "— order," the blank never having been filled in, must be construed as payable to "my order," i.e., to the order of the drawer, & if indorsed by him, it becomes a valid bill of exchange.—*CHAMBERLAIN v. YOUNG*, [1893] 2 Q. B. 206 ; 63 L. J. Q. B. 28 ; 69 L. T. 332 ; 42 W. R. 72 ; 9 T. L. R. 527 ; 39 Sol. Jo. 580 ; 4 R. 497, C. A.

**219. Alternative payees.]—**A note, whereby the maker promised to pay to A., or to B. & C., a sum therein specified, value received :—*Held* : (1) not a promissory note within 3 & 4 Anne, c. 9 ; (2) an action could not be maintained at common law upon such an instrument, even by the payee against the maker, although it was stated on the face of the note to be given for value received.—*BLANCKENHAGEN v. BLUNDELL* (1819), 2 B. & Ald. 417 ; 106 E. R. 418.

*Annotations* :—*Consd.* Absolon v. Marks (1847), 17 L. J. Q. B. 7. *Distd.* Watson v. Evans (1863), 1 H. & C. 662. *Refd.* Holmes v. Jaques (1866), L. R. 1 Q. B. 376.

**220. Payee's abode not specified.]—**A bill :—*Held* : void under 15 Geo. 3, c. 51, & 17 Geo. 3, c. 30, for not specifying the place of abode of the payee.—*R. v. MOFFATT* (1787), 1 Leach, 431 ; East, P. C. 954.

*Annotation* :—*Mentd.* R. v. Gade (1796), 2 Leach, 732.

**221. At what time payee must be ascertainable —"Treasurer General of Royal Treasury of**

Portugal." ]—A declaration in *assumpsit* stated that E. drew a bill of exchange on defts., payable to order of O., that defts. accepted, that O. indorsed to "The Treasurer General of the Royal Treasury of Portugal," & that C., then being the Treasurer General, indorsed to pltf.

Pleas that the Treasurer General of the Royal Treasury of Portugal did not indorse to pltf., & that the Treasurer General, by whom the indorsements were alleged to have been made, at the time when he indorsed was not such Treasurer General as was designated & intended by the indorsement of O., but minister of a hostile govt., & had no title or authority to indorse. Replication, that the Treasurer General who indorsed was the Treasurer General designated, etc., not adding at the time, etc., & issue thereon. It was proved that the bills were indorsed for the use of M., then king of Portugal, & received by C., being then, & at the time of the first indorsement, his treasurer, but that, after M.'s govt. had been subverted by a hostile one, & C. removed from office, C. indorsed :—*Held* : it was immaterial whether C. was Treasurer General at the time of his indorsing over or not, & the words at the time, etc., were properly omitted from the issue taken.—*SOARES v. GLYN* (1845), 8 Q. B. 24 ; 14 L. J. Q. B. 313 ; 5 L. T. O. S. 311 ; 9 Jur. 881 ; 115 E. R. 782, Ex. Ch.

*Annotation* :—*Refd.* Yates v. Nash (1860), 8 W. R. 764.

**222. "Secretary for time being." ]—**The following instrument was sued upon as a promissory note by pltf., who, at the time of the making of it, & from thence until the commencement of the action, was the secretary of the I. Assurance Society : "Nine months after date, I promise to pay to the secretary for the time being of the I. Assurance Society, or order, Co.'s Rs. 20,000 with interest at 6 per cent. per annum" :—*Held* : the note was made payable to the person, whoever he might be, who, at the time of its falling due, might be secretary to the society, & was payable on a contingency & void.—*COWIE v. STIRLING* (1856), 6 E. & B. 333 ; 25 L. J. Q. B. 335 ; 27 L. T. O. S. 136 ; 2 Jur. N. S. 663 ; 119 E. R. 889, Ex. Ch.

*Annotations* :—*Folld.* Yates v. Nash (1860), 8 C. B. N. S. 581. *Distd.* Holmes v. Jaques (1866), L. R. 1 Q. B. 376.

**223. — "Treasurer for time being." ]—**To constitute a valid bill of exchange, the payee must be a person who is capable of being ascertained at the time the instrument is drawn, & a bill drawn payable "to the order of the treasurer for the time being" of a benevolent institution, is void.—*YATES v. NASH* (1860), 8 C. B. N. S. 581 ; 29 L. J. C. P. 306 ; 2 L. T. 430 ; 6 Jur. N. S. 1343 ; 8 W. R. 764 ; 141 E. R. 1294.

*Annotation* :—*Refd.* Holmes v. Jaques (1866), L. R. 1 Q. B. 376.

**224. — "Trustees of" named chapel—"Or their treasurer for time being." ]—**An instrument

1. *Alternative payees*—To "A. or heirs."—Deft. promised to pay A. "or her heirs," a certain sum of money. On the death of A., the right to recover the money vests in her personal representative, & not in her heirs.—*DOAK v. CAN.*

**219 H. —** To "A. or his" A note payable to A. "or to his wife, to no other person," is the same as if payable to A. alone, & his exors. may

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upon it.—*MOODIE v. ROWATT* (1856), 14 U. C. R. 273.—*CAN.*

**219 III. — Treasurer of—Or successor in office—Or order.]—**"We promise to pay to A. B., treasurer of, etc., or to his successor or successors in office, or order, etc." :—*Held* : a good note, the words, "or to his successor or successors in office," being void.—*MCGREGOR v. DALY* (1855), 5 C. P. 126.—*CAN.*

*appointed.]—Held* : An instrument promising to pay to J. P., treasurer of, etc., " & his successor duly appointed," was a note, & might be sued upon by his administratrix.—*PATTON v. MELVILLE* (1861), 31 U. C. R. 263.—*CAN.*

**219 v. —** "Three months after date we promise to pay E. or J." :—*Held* : the writing was not a note, but would support a recovery on account stated.—*REED v. REED* (1853), 11 U. C. R. 26.—*CAN.*



## 34 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—Requisites common to bills of exchange, cheques and promissory notes: Sub-sect. 5. Sect. 2: Sub-sects. 1 & 2.]*

was in the following form: "On demand I promise to pay to the trustees of the W. Chapel or their treasurer for the time being £100"—*Held*: a good promissory note, as there was no uncertainty in the payee, for the trustees alone were to be taken as payees, & their treasurer as their agent only to receive payment.—*HOLMES v. JAKES* (1866), L. R. 1 Q. B. 376; 7 B. & S. 357; 35 L. J. Q. B. 130; 14 L. T. 252; 30 J. P. 693; 12 Jur. N. S. 486; 14 W. R. 584.

**225. — Or their order—Or "major part of them."**—A document: "On demand, I promise to pay J., T., & D., or to their order, or the major part of them, £100," is a promissory note, on which the three payees can maintain an action.—*WATSON v. EVANS* (1863), 1 H. & C. 662; 1 New Rep. 289; 32 L. J. Ex. 137; 158 E. R. 1050.

### SECT. 2.—REQUISITES APPLICABLE TO BILLS OF EXCHANGE AND CHEQUES ONLY.

**SUB-SECT. 1.—MUST BE AN ORDER IN WRITING.**

*See 1882 Act, s. 3.*

**226. "Please to send by bearer."**—A note: "Please to send £10 by bearer, as I am so ill I cannot wait on you"—*Held*: not an order for the payment of money.

This appears to be a mere letter, rather requesting the loan of money than ordering the payment of it. The terms of it do not import anything compulsory on the part of the drawee to pay it (*per Cur.*).—*R. v. ELLOR* (1784), 1 Leach, 323.

**227. "Mr. N. will much oblige Mr. W. by paying."**—A draft in the following words: "Mr. N. will much oblige Mr. W. by paying to R. or order £20 on his account," is a bill of exchange.—*RUFF v. WEBB* (1791), 1 Esp. 130, N. P.

**228. "Please let bearer have."**—A paper in the following words: "Mr. L. please to let the bearer have £7 & place it to my account, & you will oblige your humble servant, R. S." is not a bill of exchange.—*LITTLE v. SLACKFORD* (1828), Mood. & M. 171, N. P.

**229. "I request you to pay."**—An instrument in the following words: "I request you, in case S. should be at any time in want of money, to pay him to the extent of £80, as he is accredited with me, & I am consequently prepared to pay such an amount against his receipt"—*Held*: an order for the payment of money.—*R. v. RAAKE* (1838), 8 C. & P. 626; 2 Mood. C. C. 66, C. C. R.

**230. Request for payment to third party written by creditor on account rendered to debtor.**—A note, written by a creditor, at the foot of an account, requesting debtor to pay that account

to A., & which the creditor delivered to A. for the purpose of his getting in the money for the creditor, is not a bill of exchange or order for payment of money.—*NORRIS v. SOLOMON* (1840), 2 Mood. & R. 266, N. P.

**231. "We hereby authorise & require you"**—To pay money directed to be paid by order of court.]—J., by indenture, assigned to pltf. a ninth part of his share in the residue of the estate of T., deceased. By an order of July 29, 1842, made in a suit in Ch., of "*P. v. N.*," the V.-C. ordered debts in that suit to retain £250, being part of the produce of J.'s share of the residuary estate of T., to be paid to such person as A. & J. should jointly direct. It was afterwards agreed between the parties, that £50, to be considered as part of the £250, should be paid to the solrs. for J. & pltf. An action having been brought to recover the £50, pltf. tendered in evidence the following document: "To the exors. of T., deceased, *P. v. N.* Gentlemen, we do hereby authorise & require you to pay to P., or his order, £250, being the amount directed by the order of July 29 last, to be paid to our order"—*Held*: the document was not a bill of exchange.

This is a mere warrant for the payment of money under the order of the Ct. of Ch. (*ALDERSON, B.*).

The instrument was merely a carrying out of the order of the V.-C., & not an order capable of compelling payment (*PLATT, B.*).—*RUSSELL v. POWELL* (1845), 14 M. & W. 418; 14 L. J. Ex. 269; 5 L. T. O. S. 286; 153 E. R. 538.

*Annotation*:—*Distd. Ellison v. Collingridge* (1850), 9 C. B. 570.

**232. "Please pay J. or bearer."**—An order in the form: "Please pay J. or bearer £5 10s."—*Held*: not an order for the payment of money.—*R. v. DENNY* (1845), 1 Cox, C. C. 178.

**233. "Please to pay."**—An instrument in the form: "Please to pay T. £3 12s. 6d."—*Held*: on the face of it an order for the payment of money.—*R. v. TURBERVILLE* (1849), 4 Cox, C. C. 13.

**234. —.**—An indictment for forgery of an order for the payment of money:—*Held*: supported by proof of a forged document, containing the words, "Sirs, please to pay, etc.," which though not addressed to any one, was proved to have been presented to the bankers of the party whose signature was forged, with a representation that it was intended for them.

Here the language is, "Please to pay," which imports an order (*JERVIS, C.J.*).—*R. v. SNELLING* (1853), Dears. C. C. 219; 23 L. J. M. C. 8; 22 L. T. O. S. 107; 17 J. P. 742; 17 Jur. 1012; 2 W. R. 54; 2 C. L. R. 114; 6 Cox, C. C. 230, C. C. R. *Annotations*:—*Ridd. Peto v. Reynolds* (1854), 18 Jur. 472. *L. R. v. Overton* (1854), Dears. C. C. 368, C. C. R.

**235. —.**—J., a creditor of S. & F. Co., Ltd., being indebted to pltf., signed the following document: "Please to pay to [pltf.] or order £800, on account of money advanced by me to S. & F. Co., Ltd."—*Held*: the order, on the face

#### PART II. SECT. 2, SUB-SECT. 1.

**231. "Please let bearer"**  
"W., please let the bearer, T., the  
amount of £10, & you will  
me"—*Held*: on an for  
forgery, to be an order for the  
of money, not a mere request.—*R. v.*  
*TUKE* (1838), 17 U. C. R. 396.—*CAN.*

**232. I.**  
H. an order on P. as follows: "  
pay to R." \$138.40:—*Held*: of  
17 A.  
h. Bank "orders."—  
"orders" are not

within Commonwealth 1909  
Act, s. 78, since they are not uncon-  
ditional orders in writing for the pay-  
ment of money.—*STATE SAVINGS BANK*  
*OF VICTORIA COMRS. v. PRIMEWAN,*  
*WRIGHT & Co.*, [1915] V. L. R. 81; 19  
C. L. R. 457.—*A'*

not an order to pay out of a particular fund, but a bill of exchange.—**GRIFFIN v. WEATHERBY** (1868), L. R. 3 Q. B. 753; 9 B. & S. 726; 37 L. J. Q. B. 280; 18 L. T. 881; 17 W. R. 8.  
*Greenway v. Atkinson* (1881), 29

**236. "I hereby authorise you to pay."—**A written authority signed by a creditor, directed to his debtor & delivered to A. in the following form: "I hereby authorise you to pay A. £ . . . being the amount of my contract, he having advanced me that sum"—*Held*: not an inland bill within 55 Geo. 3, c. 184, for stamp purposes.—

**DIPLOCK v. HAMMOND** (1854), 5 De G. M. & G. 320; 2 Eq. Rep. 738; 23 L. J. Ch. 550; 23 L. T. O. S. 181; 2 W. R. 500; 43 E. R. 893, L. J. J.  
*Annotations*:—*Consd. Re Adams, Ex p. Shellard* (1873), L. R. 17 Eq. 108. *Distd. Re Whitting, Ex p. Hall* (1879), 10 Ch. D. 615, C. A. *Mentd. Brandt's Sons v. Dunlop Rubber Co.*, [1905] A. C. 454, H. L.

**237. —**—M. being indebted to plffs., gave them an unstamped document addressed to C., trustee of his father's will, in the following words: "I hereby authorise & direct you to pay to plffs. or their order £140 out of the money now due or hereafter to become due to me under the will of my late father, & before making any payment to me thereout"—*Held*: such document was an equitable assignment, & not a bill of exchange under Stamp Act, 1870, s. 48.—**FISHER v. CALVERT** (1879), 27 W. R. 301.

*Annotation*:—*Distd. Re Whitting, Ex p. Hall* (1879), 10 Ch. D. 615, C. A.

**238. Notice to owner of assignment to third person—Of sum due under contract.**—T. contracted with J. to build for him a steam launch for £80, the price to be paid when the boat should be completed & delivered. T., after receiving £40 on account, addressed a letter to J. as follows: "I hereby assign to R. & Son the £40 now due or that may hereafter become due in respect of the steam launch which I am building for you"—*Held*: T.'s letter was not an order for the payment of money, but an assignment of a debt.—**BUCK v. ROBSON** (1878), 3 Q. B. D. 686; 48 L. J. Q. B. 250; 39 L. T. 325; 26 W. R. 804.

*Annotations*:—*Reid. Re Whitting, Ex p. Rowell* (1878), 48 L. J. Bcy. 46; *Fisher v. Calvert* (1879), 27 W. R. 301; *London Clearing Bankers Com. v. L. R. Comrs.*, [1896] 1 Q. B. 542, C. A. *Mentd. Walker v. Bradford Old Bank* (1884), 12 Q. B. D. 511; *Mercantile Bank of London v. Evans* (1898), 79 L. T. 496; *Re Gunsbourg, Ex p. Trustee* (1919), 88 L. J. K. B. 479, C. A.

#### SUB-SECT. 2.—MUST BE ADDRESSED BY ONE PERSON TO ANOTHER.

See 1882 Act, ss. 3, 5 & 6.

**239. Necessity for drawer and drawee—Order by directors on cashier of company.**—An instrument issued by a co., completely registered pursuant to 7 & 8 Vict. c. 110, in the following form: "Sea, Fire, Life Assurance Co. To the cashier. Thirty days after date, credit Mrs. A., or order, with £311 9s. 6d., claims per 'S. K.' in cash, on account of this corpn.," & signed by two of the directors of the co.:—*Held*: to be a promissory note.

**ALLEN v. SEA, FIRE & LIFE ASSURANCE CO.** (1850), 9 C. B. 574; 19 L. J. O. P. 305; 15 L. T. O. S. 91; 14 Jur. 870, n.; 137 E. R. 1015.

*Annotations*:—*Reid. Lindus v. Melrose* (1858), 27 L. J. Ex. 326; *R. v. Kay* (1870), L. R. 1 C. C. R. 257.

**240. —**—*Semble*: by the law merchant an instrument is not a bill of exchange, unless it has a drawer & drawee.—**PETO v. REYNOLDS** (1854), 9 Exch. 410; 23 L. J. Ex. 98; 22 L. T. O. S. 246; 18 Jur. 472; 2 W. R. 106; 2 C. L. R. 491; 156 E. R. 175; *subsequent proceedings, sub nom. REYNOLDS v. PETO* (1855), 11 Exch. 418, Ex. Ch.

*Annotations*:—*Reid. Forbes v. Marshall* (1855), 3 C. L. R. 933; *Fielder v. Marshall* (1861), 9 C. B. N. S. 606; *McCall v. Taylor* (1865), 34 L. J. C. P. 305; *R. v. Harper* (1881), 7 Q. B. D. 78, C. C. R. *Mentd. Armfield v. Allport* (1857), 27 L. J. Ex. 42.

**241. — Draft by one branch on another.**—A banker's draft payable to order on demand addressed by one branch of a bank to another branch of same bank & crossed is not a cheque within 1882 Act, ss. 60, 82, nor is it within Revenue Act, 1883 (c. 55), s. 17, but it is within Stamp Act, 1853 (c. 59), s. 19, which protects bankers *bond fide* paying such drafts to holders claiming under forged indorsements.—**CAPITAL & COUNTIES BANK, LTD. v. GORDON, LONDON CITY & MIDLAND BANK, LTD. v. GORDON**, [1903] A. C. 240; 72 L. J. K. B. 451; 88 L. T. 574; 51 W. R. 671; 19 T. L. R. 462; 8 Com. Cas. 221, H. L.; *varying S. C. sub nom. GORDON v. LONDON CITY & MIDLAND BANK, GORDON v. CAPITAL & COUNTIES BANK*, [1902] 1 K. B. 242, C. A.

*Annotations*:—*Mentd. Brown, Brough v. National Bank of India* (1902), 18 T. L. R. 669; *Akrokerri (Atlantic) Mines v. Economic Bank*, [1904] 2 K. B. 465; *Bevan v. National Bank, Bevan v. Capital & Counties Bank* (1906), 23 T. L. R. 65; *Holland v. Manchester & Liverpool District Banking Co.* (1909), 14 Com. Cas. 241; *Jones v. Coventry*, [1909] 2 K. B. 1029, D. C.; *Crumplin v. London Joint Stock Bank* (1913), 109 L. T. 856; *Morison v. London County & Westminster Bank*, [1914] 3 K. B. 336, C. A.; *Dey v. Mayo*, [1920] 2 K. B. 346, C. A.

**242. — Drawn by banker on himself.**—An instrument is not prevented from being a cheque within 1882 Act, s. 73, by reason of the fact that it is drawn by a banker on himself.—**ROSS v. LONDON COUNTY WESTMINSTER & PARISH BANK**, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636.

**243. Directed to A. or in his absence B. Equivalent to draft on A. only.**—A bill of exchange was directed to A. or, in his absence, to B. In an action against A. for non-payment, the declaration was of a bill directed to him without any notice of B.:—*Held*: the declaration was good.—**ANON.** (1701), 12 Mod. Rep. 447; 88 E. R. 1442.

**244. Addressed "at" instead of "to" drawee.**—An instrument in a common form of a bill of exchange, except that the word "at" is substituted for "to," before the name of the drawees, may be declared on as a bill of exchange, or, *semble*: may be treated as a promissory note, at the option of the holder.—**SHUTTLEWORTH v. STEPHENS** (1808), 1 Camp. 407, N. P.

*Annotations*:—*Reid. Allan v. Mawson* (1814), 4 Camp. 116, N. P.; *Rowe v. Young* (1820), 2 Bll. 391, H. L.

#### PART II. SECT. 2, SUB-SECT. 2.

**240 i. Necessity for drawer & drawee.**—Three months after date, pay to the order of W. T., at P. H., £223 7s. 6d., for value received"—*Held*: not a bill,

for want of a drawee.—**FORWARD v.** (1854), 12 U. C. R. 103.—

**240 ii. —**—Where the drawee not mentioned, the order is not a bill

of exchange.—**McPHERSON v. JOHNSTON** (1894), 3 B. C. R. 465.—**CAN.**

**242 i. — Drawn by banker on him self.**—**McCLINTOCK v. UNION BANK** (1920), 20 S. R. N. S. W. 494.—**AUS.**



## 36 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Requisites applicable to bills of exchange and cheques only: Sub-sect. 2. Sects. 3 Sub-sect. 1.*

**245.** —.—.]—An instrument was in the following form: "Please pay bearer on demand £15 & accmpt to your humble servant, C. R. Payable at M. & Co., White Hart Ct., W. M." M. & Co. could have paid the draft, if satisfied that W. M.'s signature was in his writing:—*Held*: not an order on a banker for the payment of money.—*R. v. RAVENSCROFT* (1809), Russ. & Ry. 161, C. C. R.

*Reid. R. v. Snelling* (1853), Dears. C. C. 59, C. C. R. *Mentd. R. v. Newton* (1838), 2 Mood. C. C. 59, C. C. R.

**246.** —.—.]—The following document: "2 months after date pay B. or order, £28 15s., value received, J. J. at S. & Co., bankers":—*Held*: a bill of exchange, & not a promissory note.—*R. v. HUNTER* (1823), Russ. & Ry. 511, C. C. R.

**247.** —.—.]—An instrument payable to the order of A. & directed "at P. & Co., bankers," may be described as a bill of exchange in an indictment for forgery, notwithstanding there is no drawee & no acceptor.—*R. v. SMITH* (1843), 2 Mood. C. C. 295, C. C. R.

*Annotations:—Distd. Peto v. Reynolds* (1854), 9 Exch. 410. *Reid. R. v. Blenkinsop* (1847), 2 Car. & Kir. 531, C. C. R.

**248.** —.—.]—A bill in the following form: "Please to pay J. or bearer £5 10s. payable at H. & Co., 272, Fleet Street, H. P.":—*Held*: not an order on a banker, being addressed to no one.—*R. v. DENNY* (1845), 1 Cox, C. C. 178.

**249.** —.— "At" inserted for purpose of deception.]—An instrument which appears on common observation to be a bill of exchange may be treated as such, although words be introduced into it for the purpose of deception, which might make it a promissory note.

An instrument was in the following form: "Two months after date pay A., or order, £40, value received. B. At Sir J. P., B. & Co., bankers." The word "at" was in very small letters inclosed in the hook of the S which followed:—*Held*: it was for the jury whether the word "at," from the manner in which it was written, was not inserted for the purpose of deception, & then the instrument was a bill of exchange in point of fact.—*ALLAN v. MAWSON* (1814), 4 Camp. 115, N. P.

*Annotations:—Consd. Peto v. Reynolds* (1854), 23 L. J. Ex. 98. *Reid. Allen v. Sea, Fire & Life Assoc.* (1850), 9 C. B. 574; *Harris v. G. W. Ry. Co.* (1876), 1 Q. B. D. 515.

**250.** Drawn on fluctuating body—"Commissioners of H.M.'s Navy."—A bill upon the comrs. of the navy for pay, addressed, "Gentlemen, please pay," etc., & concluding, "To the comrs. of H. M. Navy, London":—*Held*: a good bill of exchange, notwithstanding that the comrs. were removable at pleasure & might be changed between the drawing & presentment of the bill.—*R. v. CHISHOLM* (1815), Russ. & Ry. 297, C. C. R.

**251.** No drawee specified—Bill made payable at named place.]—An instrument drawn payable to the drawer or his order, & made payable at No. 1, W. street, without being addressed to any person by name, was afterwards accepted by

deft.:—*Held*: (1) it was not necessary that the name of the party, who afterwards accepted the bill should have been inserted, it being directed to a particular place, which could only mean to the person who resided there; (2) deft., by accepting it, acknowledged that he was the person to whom it was directed, & he was liable in an action on the instrument as a bill of exchange.—*GRAY v. MILNER* (1819), 8 Taunt. 739; 3 Moore, C. P. 90; 129 E. R. 571.

*Annotations:—Folld. R. v. Smith* (1843), 2 Mood. C. C. 295, C. C. R. *Consd. Davis v. Clarke* (1844), 6 Q. B. 16. *Folld. Cowley v. Hamp* (1851), 18 L. T. O. S. 143, N. P. *Consd. Peto v. Reynolds* (1854), 9 Exch. 410. *Reid. National Park Bank of New York v. Breggen* (1914), 110 L. T. 907.

**252.** —.— Bill accepted.]—An instrument was in the following form: "Two months after date pay to my order £20 for value received. E. H., general provision warehouse, baker, etc., U. Street, Hockley." On it was written an acceptance thus, "Accepted. Payable at G. & T., bankers, Banbury. W. S.":—*Held*: properly described as a bill of exchange, though not addressed to any person as drawee.—*R. v. HAWKES* (1838), 2 Mood. C. C. 60, C. C. R.

*Annotations:—Distd. R. v. Curry* (1841), 2 Mood. C. C. 218, C. C. R., where the ct. pointed out that the act of putting the acceptance was a sort of estoppel to say it was not a bill of exchange. *Consd. Peto v. Reynolds* (1854), 9 Exch. 410. *Reid. R. v. Snelling* (1853), Dears. C. C. 219, C. C. R.

**253.** —.—.]—A bill of exchange is valid, though it is not directed to any person; the acceptor becomes the drawee.—*COWLEY v. HAMP* (1851), 18 L. T. O. S. 143, N. P.

**254.** —.— Treated as promissory note.]—An instrument was in the following form: "At sight of this my third of exchange . . . please pay P. or order £200 for value received & place same to the account of A." Across it was written "accepted R.":—*Held*: not a bill of exchange as it had no drawee, but if R. promised to pay after it was drawn, it might be treated as a promissory note.—*PETO v. REYNOLDS* (1854), 9 Exch. 410; 23 L. J. Ex. 98; 22 L. T. O. S. 246; 18 Jur. 472; 2 W. R. 196; 2 C. L. R. 491; 156 E. R. 175; *subsequent proceedings, sub nom. REYNOLDS v. PETO* (1855), 11 Exch. 418, Ex. Ch.

*Annotations:—Distd. M'Call v. Taylor* (1865), 34 L. J. C. P. 385. *Reid. Forbes v. Marshall* (1855), 3 C. L. R. 933; *Armfield v. Allport* (1857), 27 L. J. Ex. 42; *Fielder v. Marshall* (1861), 9 C. B. N. S. 606; *R. v. Harper* (1881), 7 Q. B. D. 78, C. C. R.

**255.** —.— Addressed to payee instead of drawee.]—An instrument purporting on the face of it to be a bill of exchange drawn by A., payable to pltf. or order, was accepted by B., & handed to pltf. in satisfaction of a claim for rent due to her from A. In the place where the direction to the drawee was usually to be found, the name & address of the payee were inserted. The whole instrument, except the drawer's name, was in the handwriting of B.:—*Held*: the payee was entitled to recover upon it as a promissory note.—*FIELDER v. MARSHALL* (1861), 9 C. B. N. S. 606; 30 L. J. C. P. 158; 3 L. T. 858; 7 Jur. N. S. 777; 142 E. R. 238.

*Annotation:—Reid. M'Call v. Taylor* (1865), 19 C. B. N. S. 301.

**2511.** No drawee at a named place.]—An instru- in the following words: "At the

to pay B. or bearer, the sum of 10s. for value received. Payable at of S a bill of

—*GORDON v. BOWMAN* (1865), S. C. R. 26.—*AUS.*



**256. — Bill not accepted.]—**A document the following form: "Please to pay on demand to bearer £20 for value received, as witness our hand, G. & Co." :—*Held*: not a bill of exchange or order for the payment of money.—*R. v. CURRY* (1841), 2 Mood. C. C. 218, C. C. R.

**257. — Admissibility of evidence to show on whom drawn.]—**A document was in the following form: "Please to pay bearer Mrs. S. £854 10s. for me. R." :—*Held*: though the document was not addressed to any one, it might, on the trial of an indictment for forging an order for the payment of money, be shown by evidence to be an order for the payment of money, & for whom it was intended.

I am not clear that an order for the payment of money requires the name of the drawee to appear on it, & I am not satisfied that there is not enough on the face of it to make it an order without showing who was meant to pay it (*PARKE, B.*).—*R. v. SNEILING* (1853), *Dears. C. C.* 219; 23 L. J. M. C. 8; 22 L. T. O. S. 107; 17 J. P. 742; 17 Jur. 1012; 2 W. R. 54; 2 C. L. R. 114; 6 Cox, C. C. 230, C. C. R.

*Annotations*:—*Reid. Peto v. Reynolds* (1854), 18 Jur. 472; *R. v. Overton* (1854), *Dears. C. C.* 308, C. C. R.

**258. Drawer & drawee same person—Bill in nature of note.]—**A bill of exchange drawn by a party on himself, is in the nature of a promissory note.—*ROACH v. OSTLER* (1827), 1 Man. & Ry. K. B. 120; 6 L. J. O. S. K. B. 43.

**259. Is in substance promissory note.]—**A bill drawn on behalf of a co. upon & accepted by the co. is in substance a promissory note.—*DICKINSON v. VALPY* (1829), 10 B. & C. 128; L. & Welsb. 6; 5 Man. & Ry. K. B. 126; 8 L. J. O. S. K. B. 51; 109 E. R. 399.

*Annotations*:—*Mentd. Thicknesse v. Bromilow* (1832), 2 Cr. & J. 425; *Dickenson v. Teague* (1834), 4 Tyr. 450; *Bramah v. Roberts* (1837), 3 Bing. N. C. 963; *Pitchford v. Davis* (1839), 5 M. & W. 2; *Ford v. Whitmarsh* (1840), H. & W. 53; *Tredwen v. Bourne* (1840), 6 M. & W. 461; *Steigenberger v. Carr* (1841), 10 L. J. C. P. 253; *Reynell v. Lewis, Wyld v. Hopkins* (1846), 10 Jur. 1097; *Ricketts v. Bennett* (1847), 4 C. B. 686; *Galvanized Iron Co. v. Westoby* (1852), 8 Exch. 17; *London & Continental Assoc. Soc. v. Hedgrave* (1858), 4 C. B. N. S. 524; *Martyn v. Gray* (1863), 14 C. B. N. S. 824; *Edmonds v. Bushell & Jones* (1866), 12 Jur. N. S. 332; *Garland v. Jacomb* (1873), L. R. 8 Exch. 216; *Farquharson v. King*, [1902] A. C. 325, H. L.

**260. — May be declared on as promissory note—Drawn on bank by branch.]—**An instrument in the form of a bill of exchange, drawn upon a joint stock bank by the manager of one of its branch banks, by order of the directors, may be declared upon as a promissory note.—*MILLER v. THOMSON* (1841), 3 Man. & G. 576; 1 Dowl. N. S. 199; 4 Scott, N. R. 204; 11 L. J. C. P. 21; 133 E. R. 1271.

*Annotation*:—*Reid. Fielder v. Marshall* (1861), 9 C. B. N. S. 606.

**261. — May be treated as either bill or note—Drawn by one branch on another of same firm.]—**When an instrument purporting to be a bill of

exchange is drawn by one branch of a mercantile house upon another branch of the same house :—*Semble*: the holder may, at his election, treat it as a bill of exchange, or as a promissory note.—*WILLANS v. AYERS* (1877), 3 App. Cas. 133; 47 L. J. P. C. 1; 37 L. T. 732, P. C.

*Annotation*:—*Reid. Re Commercial Bank of South Australia* (1887), 36 Ch. D.

**262. — May be treated as bill.]—**An instrument may be a bill of exchange, though the drawer & drawee are the same person (*BAYLEY, J.*).—*MAGOR v. HAMMOND* (1829), cited 9 B. & C. at p. 364; 109 E. R. 135.

**263. — —.]—***Semble*: an instrument drawn by a person transacting business in one place upon himself transacting business in another place is a bill within 1882 Act, s. 5 (2).—*BROWN, BROUGH & Co. v. NATIONAL BANK OF INDIA, LTD.* (1902), 18 T. L. R. 669; 46 Sol. Jo. 617.

*Annotation*:—*Mentd. Capital & Counties Bank v. Gordon, London City & Midland Bank v. Gordon*, [1903] A. C. 240, H. L.

**264. — — Where such is intention of parties.]—**Although bills of exchange, drawn & accepted by the same parties, may be in strictness promissory notes rather than bills, yet where the intention to give & receive such documents as instruments capable of being negotiated in the market as bills of exchange is clear, both the holders & the parties may treat them accordingly.—*WILLANS v. AYERS* (1877), 3 App. Cas. 133; 47 L. J. P. C. 1; 37 L. T. 732, P. C.

*Annotation*:—*Reid. Re Commercial Bank of South Australia* (1887), 36 Ch. D. 522.

**Bill drawn by several parties—Payable to one of them & others.]—**See Part XXII., Sect. 5, sub-sect. 2,

### SECT. 3.—REQUISITES APPLICABLE TO CHEQUES ONLY.

See 1882 Act, ss. 73–82; Part XIX., *post*, & generally, *BANKERS & BANKING*, Vol. III., pp. *et seq.*, 237 *et seq.*

### SECT. 4.—REQUISITES APPLICABLE TO PROMISSORY NOTES ONLY.

SUB-SECT. 1.—MUST BE A PROMISE IN WRITING MADE BY ONE PERSON TO ANOTHER.

See 1882 Act, s. 83.

See, also, cases in Part XXV., Sect. 1, sub-sect. 3, *post*.

**265. No particular form of words necessary.]—**No particular words are necessary to make an instrument a promissory note. It is sufficient if a promise can be fairly implied.—*BROOKS v.* (1830), 2 M. & W. 74; 2 Gale, 200; 6 J. Ex. 6; 150 E. R. 675.

*Annotations*:—*Distd. Jarvis v. Wilkins* (1841), 7 M. & W. 410. *Mentd. Melanotte v. Teasdale* (1844), 1 New Pract. 17.

**266 i. Drawer & drawee same person—Two departments of corporation.]—**A warrant issued by the police committee of the city council, addressed to the city treasurer, is not a bill of exchange, though made payable to order. The drawers & drawee of such a document, representing different departments of the same corporation, are in reality the same person, *vis.*, the corporation

*v. LA MONTREAL* (1898), Q. R. 15 S. C. 96.

### PART II. SECT. 4, SUB-SECT. 1.

**1. General rule.]—**A document is not a promissory note if it does not contain an express promise to pay.—*GOVIND GOPAL v. BALWANTRAO*

1. L. R. 22 Bom. 986.—IND.

**265 i. No particular form of words necessary.]—**No set form of words is requisite to constitute a promissory note, & an instrument called a writing obligatory or a *bon payable* to order for value received may be considered as a note in writing.—*HALL v. BR* (1845), 1 R. de L. 180.—CAN.

## 38 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 4.—Requisites applicable to promissory notes only: Sub-sect. 1.]**

**266. — Ought to have essentials of contract.]**

—Although no precise form of words is necessary to constitute a promissory note, still it ought to have all the essentials of a contract.—**BROWN v. DE WINTON** (1848), 6 C. B. 336; 6 Dow. & L. 62; 17 L. J. C. P. 281; 11 L. T. O. S. 329; 12 Jur. 678; 136 E. R. 1281.

**Annotations:—****Expld.** *Enthoven v. Hoyle* (1853), 13 C. B. 378, Ex. Ch. **Held.** *Masters v. Baretto* (1849), 8 C. B. 433; *Allen v. Sea, Fire & Life Assoe.* (1850), 9 C. B. 574. **Mentd.** *Gay v. Lander* (1848), 6 C. B. 386.

**267. — Anything from which court can infer obligation to pay.]**—A co. issued in payment to vendors of land instruments described on their face as "debenture bonds," & stamped as bonds, & expressed that the co. "bind themselves & their successors to pay the bearer the principal sum of £20." The words with respect to interest were in similar form, & there was no charge on any part of the property of the co. The instruments were sold in open market:—**Held:** the instruments were promissory notes, or if not promissory notes, negotiable instruments, & amounted to contracts to pay any one who might happen to be the bearer.

Anything from which a ct. can collect an obligation on the one side to pay in favour of another is a promissory note, whether the maker is an individual or a public co. (**MALINS, V.-C.**).—**Re IMPERIAL LAND CO. OF MARSEILLES, Ex p. COLBORNE & STRAWBRIDGE** (1870), L. R. 11 Eq. 478; 40 L. J. Ch. 93; 23 L. T. 515; 19 W. R. 223.

**Annotations:—****Held.** *Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374; *Re Imperial Land Co. of Marseilles, Ex p. Larking* (1877), 4 Ch. D. 586; *British India Steam Navigation Co. v. I. R. Comrs.* (1881), 7 Q. B. D. 166. **Mentd.** *Re South Essex Estuary & Reclamation Co., Ex p. Chorley* (1870), 19 W. R. 430; *Re Hercules Insee, Brunton's Claim* (1874), L. R. 19 Eq. 302.

**268. May be joint or several.]**—A declaration that debt. & another made their promissory note, by which they jointly or severally promised to pay, is good.—**REES v. ABBOTT** (1778), 2 Cowp. 832; 98 E. R. 1386.

**267 i. — Anything from which court can infer obligation to pay.]**—The question whether an instrument is a promissory note or not should be judged by the words used, & the instrument must contain in words an unconditional undertaking to pay a sum of money; it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. The

on . . . in favour of . . . by . . . the sum found due by me as is Rs. 600 . . . which sum I promise to you or to your order on demand with interest at 11 per cent." :—**Held:** a promissory note.

**MOIDKEN SAHIB** (1913), 1 L. R. 36 Mad. 370.—**IND.**

**ii. — . . . ]—A**  
or letter which says, "Amount of  
I pay by me is Rs. 350. I  
in two weeks' time returning this  
of Rs. 350 with interest thereon  
at the rate of Rupee 1 per cent. per  
month, get back this letter," is a  
promissory note & not merely an offer  
to borrow or an acknowledgment of  
indebtedness. The mere use of the  
word *parthamanam*, instead of pro-  
missory note, will not deprive the  
of its real character of pro-  
note if its terms show that it is

such.—**MUTHU SASTRIGAL v. NATHA PANDARASANNADHI**  
L. R. 38 Mad. 660.—**IND.**

**267 iii. — No inference of promise.]**—An instrument as follows: "3 months after date, pay to the order of W. T., at Port Hope, £228 7s. 6d., for value received":—**Held:** not a note, for want of a promise to pay.—**FORWARD v. THOMPSON** (1854), 12 U. C. R. 103.—**CAN.**

**267 iv. — Contract with stranger.]**—An instrument as follows: "12 months from June 26, 1873, I will pay J. \$90 for D., or otherwise settle the sum of \$90 for him, on a note that he says he gave J. \$100":—**Held:** not a promissory note, but an agreement with D.—**COCHRANE v. CAIE** (1875), 3 Pag. 224.—**CAN.**

**by words written on**  
words "to guarantee notes indorsed at the bank," written on a note as a renewal of past due notes, do not alter its character nor convert it from a promise to pay into a mere promise to guarantee.—**BANQUE NATIONALE**  
(1913), Q. R. 44 S. C. 445;  
Q. R. 25 K. B.

In the form of a promissory note, the words "value received"

**Annotation:—****Held.** *Evans v. Lewis* (1794), 1 Wms. Saund. 291, d.

**269. Promise to be accountable.]**—A note, by which the maker promises to be accountable to J. or order, is a good note.

When debt. promises to be accountable for it to A., it is the same thing as a promise to pay A. (*per CUR.*).—**MORRIS v. LEE** (1725), 2 Ld Raym. 1396; 1 Stra. 629; 92 E. R. 409; *sub nom.* **MORICE v. LEE**, 8 Mod. Rep. 362.

**270. — With interest.]**—An instrument in the following form: "I have received £20, which I borrowed of you, & I have to be accountable for the sum with interest":—**Held:** an agreement, & not a promissory note.—**HORNE v. REDFEARN** (1838), 4 Bing. N. C. 433; Arn. 190; 6 Scott, 260; 7 L. J. C. P. 214; 2 Jur. 376; 132 E. R. 854.

**Annotations:—****Held.** *White v. North* (1849), 3 Exch. 689. **Mentd.** *Matheson v. Ross* (1849), 2 H. L. Cas. 286, H. L.

**271. — At notice.]**—A document was in the following form: "Borrowed of J. £200, to account for, on behalf of the A. Club, at . . . months' notice, if required":—**Held:** not a promissory note.

A similar instrument, with the blank filled up with the word "two":—**Held:** not a promissory note.—**WHITE v. NORTH** (1849), 3 Exch. 689; 18 L. J. Ex. 316; 154 E. R. 1022.

**272. Acknowledgment of debt—Promise to pay.]**—An instrument was in the following form: "I do acknowledge that C. has delivered me all the bonds & notes for which £400 were paid him on account of S., & that C. delivered me G.'s receipt & bill on me for £10, which £10 & £15 5s. balance due to C. I am still indebted, & do promise to pay":—**Held:** a promissory note.—**CHADWICK v. ALLEN** (1726), 2 Stra. 706; 93 E. R. 797.

**Annotations:—****Held.** *Green v. Davies* (1825), 4 B. & C. 235. **Held.** *Brown v. De Winton* (1848), 6 C. B. 336.

**273. — To be paid on demand.]**—An instrument was in the following form: "I do acknowledge myself to be indebted to A. in £100 to be

were struck out, & above was written "account of lumber to be shipped":—**Held:** a promissory note, the words introduced being merely a statement of the transaction giving rise to the note, & not qualifying the actual promise to pay therein set forth.—**MERCHANTS BANK OF CANADA v. BURY** (1915), 33 O. L. R. 204; 8 O. W. N. 239.—**CAN.**

**p. — Pleading.]**—In a declaration by payee against maker of a promissory note, the count averred, that debt. made his promissory note in writing, & thereby promised to pay pltf.:—**Held:** the promise to pay was sufficiently averred.—**CONWAY v. LEWIS** (1845), 8 L. L. R. 4.—**IR.**

**270 i. Agreement to be accountable—With interest.]**—A writing, admitting receipt of money, & agreeing to be responsible for same with interest at 7 per cent. *per annum*, upon production of receipt & after notice, may be recovered upon as a promissory note.—**LA FOREST v. BABINEAU** (1906), 37 S. C. R. 521.—**CAN.**

**272 i. Acknowledgment of**  
writing merely certifying that a person is indebted to another in a certain sum of money is not negotiable as a promissory note.—**DASILVA v. DUFOUR** (1866), 16 L. C. R. 394.—**CAN.**

**273 i. — To be paid on demand.]**—A note in the following form: "On



## PART II.—REQUIREMENTS OF FORM.

paid on demand for value received":—*Held*: a promissory note.—*CASBORNE v. DUTTON* (1727), Sel. N. P. 13th ed. Vol. I. 329, N. P.

**274. ——— With interest.]**—An instrument, as follows: "Received of A. £100, which I promise to pay on demand, with lawful interest, J. D.," is a promissory note.—*GREEN v. DAVIES* (1825), 4 B. & C. 235; 1 C. & P. 675; 6 Dow. & Ry. K. B. 306; 3 L. J. O. S. K. B. 185; 107 E. R. 1046.

*Annotations*:—*Reid*. *Wise v. Charleton* (1836), 2 Har. & W. 49; *Brown v. De Winton* (1848), 6 C. B. 336. *Mentd.* *Anon.* (1827), 6 L. J. O. S. K. B. 76; *Brown v. Dean* (1833), 2 Nev. & M. K. B. 316; *Shrivell v. Payne* (1840) 8 Dowl. 441; *Ashling v. Boon*, [1891] 1 Ch. 568.

**275. ———.]**—Pltf. deposited with deft. £500 for the purpose of a speculation in foreign stock, & deft. signed the following memorandum:

Bristol, Aug. 14, 1843. Memorandum. S. has this day deposited with me £500, on the sale of £10,300 3 per cent. Spanish, to be returned on demand":—*Held*: this was not a promissory note.—*SIBREE v. TRIPP* (1846), 15 M. & W. 23; 15 L. J. Ex. 318; 153 E. R. 745.

*Annotations*:—*Mentd.* *Curlewis v. Clark* (1849), 3 Exch. 375; *Cooper v. Parker* (1855), 15 C. B. 822; *Goddard v. O'Brien* (1882), 9 Q. B. D. 37; *Foakes v. Beer* (1884), 9 App. Cas. 605; *Bidder v. Bridges* (1887), 37 Ch. D. 406; *Re A Debtor, Ex p. London & County Discount Co.* (1909), 100 L. T. 380; *Morris v. Baron*, [1918] A. C. 1.

**276. ——— I.O.U.]**—*Held*: an I.O.U. was a promissory note, though not negotiable.—*GREY v. HARRIS* (1800), 1 Camp. 501, n.

**277. ———.]**—Two unstamped slips of paper, with "I.O.U. £100," & "I.O.U. £250," written thereon, are not promissory notes.—*CHILDERS v. BOULNOIS* (1822), Dow. & Ry. N. P. 8, N. P.

**278. ——— Stating time for payment.]**—An instrument in the following form: "Oct. 11, 1831 I.O.U. £20, to be paid on the 22nd inst. W. B.," requires a stamp as a promissory note.—*BROOKS v. ELKINS* (1836), 2 M. & W. 74; 2 Gale, 200; 6 L. J. Ex. 6; 150 E. R. 675.

*Annotations*:—*Consd.* *Melanotte v. Teasdale* (1844), 1 New Pract. Cas. 17. *Mentd.* *Jarvis v. Wilkins* (1841), 7 M. & W. 410.

**279. ———.]**—A paper signed by deft. in the following form: "I.O.U. £85 to be paid May 5":—*Held*: a promissory note.—*WATTMANN v. ELSEE* (1843), 1 Car. & Kir. 35, N. P.

demand I promise to pay P. the sum of £20," amounts to nothing more than an acknowledgment of a debt which debtor promises to pay on demand.—*JILLARD v. PENDIKONSKY* (1880), 6 Nfld. L. R. 254.—*NFLD.*

**274 i. ——— Agreement to pay interest.]**—An instrument as follows: "We acknowledge having received from you" £2,500 sterling, being a loan, "subject to be returned when demanded, & for which we agree to pay you interest":—*Held*: not a promissory note.—*WISHAW v. GILMOUR* (1862), 6 L. C. J. 319; 13 L. C. R. 94.—*CAN.*

**to pay interest.]**—A writing in these words: "I, the undersigned, acknowledge to well & legally owe to W. hereto present & accepting creditor, \$81.60 currency for value received on account of notes consented to before this day, \_\_\_\_\_ myself to pay to the said creditor or

order, within one year from this with interest at 7 per cent. from date until complete payment, the said interest payable semi-annually":—*Held*: a promissory note.—*WURTELE v. GIROUARD* (1873), 6 R. L. O. S. 737; 18 L. C. J. 154.—*CAN.*

**s. ——— Stating amount due & time for payment.]**—In one document a sum of Rs.203 was stated to be "due to you, & payable on July 10," & in the other a sum of Rs.516 was mentioned "for which I give you this writing, the whole amount of which will be paid up in full on Aug. 3":—*Held*: promissory notes.—*MANICK CHUND v. JOMONA DOSS* (1880), 1 L. R. 8 Calc. 645.—*IND.*

**t. ——— "I am bound to pay"** With debtor signed delivered to his creditor a document as follows: "The account executed on \_\_\_\_\_ by \_\_\_\_\_ to \_\_\_\_\_. The amount which I have this day received from you

**280. ———.]**—A document in the following form: "I.O.U. £103 10s. to be returned in 6 months" requires a stamp as a promissory note.—*ILLEWELLYN v. MARSHALL* (1850), L. T. O. S. 260.

**281. ——— Stating mode of payment.]**—A paper was in the following form: "I, R. \_\_\_\_\_ owe E. £6, which is to be paid by instalments for rent. R. M.":—*Held*: not to be a promissory note, as no time was stipulated for the payment of the instalment.—*MOFFAT v. EDWARDS* (1841), Car. & M. 16, N. P.

*Annotation*:—*Folld.* *Mitchell v. Westover* (1850), 15 L. T. O. S. 113.

**282. ——— With interest.]**—A document in the following form: "1839, Nov. 11. I.O.U. £45 13s. which I borrowed of Mrs. M., & to pay her 5 per cent. till paid. R. T.":—*Held*: not to require a stamp as a promissory note.—*MELANOTTE v. TEASDALE* (1844), 13 M. & W. 216; 1 New Pract. Cas. 17; 13 L. J. Ex. 358; 3 L. T. O. S. 222; 153 E. R. 90.

*Annotations*:—*Folld.* *Richardson v. Green* (1847), 8 L. T. O. S. 435; *Taylor v. Steele* (1847), 16 M. & W. 665; *Smith v. Smith* (1859), 1 F. & F. 539. *Reid*. *Taylor v. Field* (1847), 2 New Pract. Cas. 221.

**283. ——— & assignment of rent.]**—A document was in the following form: "I.O.U. £50, & in consideration of having received the sum from you, I hereby agree to let you have the rent of my four freehold houses until the money repaid, & to pay you same when the houses are sold, & to let you have in the meantime 5 per cent. interest":—*Held*: the document was not a promissory note.—*GRIX v. DALBY* (1854), 23 L. T. O. S. 271, N. P.

**284. ———.]**—A document in the following form: "This is to certify that I owe £210 to A. I promise to pay interest at 5 per cent.":—*Held*: an I.O.U. merely, & not a promissory note.—*SMITH v. SMITH* (1859), 1 F. & F. 539, N. P.

**285. ——— "For value received."]**—Where an I.O.U. "for value received" was given:—*Held*: the words "for value received" did not make such document a promissory note.—*GOULD v. COOMBS* (1845), 1 C. B. 543; 14 L. J. C. P. 175; 5 L. T. O. S. 93; 9 Jur. 494; 135 E. R. 653.

*Mentd.* *Buck v. Hurst & Bailey* (1860) L. R. 1 C. P. 297.

is Rs.700. This sum I am bound to pay you. Therefore, adding to sum interest at 8 annas per \_\_\_\_\_ it. per mensem, I am liable to pay \_\_\_\_\_ *Held*: not a promissory note.—*GOUNDAN v. RAMA REDDI* (1897), 1 L. R. 21 Mad. 49.—*IND.*

**276 i. ——— I.O.U. — Distinguished from instrument to secure repayment of money.]**—There is a sound distinction between an I.O.U., which is an acknowledgment of a debt, & an instrument given to secure repayment of a sum of money.—*BARRY v. HARDING* (1844), 1 Jo. & Lat. 475.—*IR.*

**278 i. ——— Stating time for payment.]**—A writing in the following terms: "I.O.U. £100 which I promise to pay on demand":—*Held*: a promissory note, & the words "I.O.U." must be construed as an acknowledgment of indebtedness & to correspond with the words for "value".—*MUIR v. MUIR*, [1912] 1 S. L. T. 304.—*SCOT.*



**4. — Requisites applicable to promissory notes**

**Effect & admissibility in evidence of.]**—See Parts XXI. & XXV., Sect. 1, sub-sect. 3,

**286.** "Which I will pay in two years."—Pltfs. sold books for debt., some of which were returned by the purchasers as imperfect. Debt. thereupon wrote to pltfs. the following letter: "I have received the imperfect books, which, together with the cash overpaid on the settlement of your account, amounts to £80 7s., which sum I will pay in 2 years"—*Held*: this was a promissory note.—**WHEATLEY v. WILLIAMS** (1836), 1 M. & W. 533; 2 Gale, 140; Tyr. & Gr. 1043; 5 L. J. Ex. 237; 150 E. R. 516.

*Annotations*:—**Reid**. **Jarvis v. Wilkins** (1841), 7 M. & W. 410. **Mentd.** **Turquand v. Knight** (1836), 2 M. & W. 98; **Spong v. Wright** (1842), 9 M. & W. 629; **Cleave v. Jones** (1852), 21 L. J. Ex. 105; **Fryer v. Roe** (1852), 12 C. B. 437.

**287.** — "To be paid by me."—An instrument was in the following form: "Memorandum, that I had £5 5s. for 1 month, of my mother & S., from this date, to be paid by me to her, B."—*Held*: a promissory note.—**SHRIVELL v. PAYNE** (1840), 8 Dowl. 441; 4 Jur. 485.

**288.** —.]—A document made in the following form: "Borrowed this day of J. £100 for 1 or months, cheque £100 on the N. bank. A. B."—*Held*: to be a mere acknowledgment, & not to require a stamp as a promissory note.—**HYNE v. DEWDNEY** (1852), 21 L. J. Q. B. 278; *sub nom.* **HINE v. DEWDNEY**, 19 L. T. O. S. 61.

**289.** —.]—An instrument in the following form: "We promise to pay to W. as curator for J. £2,000, value received in money borrowed of him for the purposes of the Clyde Navigation Trust," was given by trustees. The note purported to be payable upon demand, but there was a stipulation at the time that it was to be considered in the nature, to some extent, of a permanent investment, & that the trustees were not to be called upon to pay on demand, but that they were to have a counter undertaking that it should only be enforced at the end of 3 months after notice:—*Held*: the instrument was nothing more than an informal mode of giving a written acknowledgment of a debt.—**CLYDE TRUSTEES v. DUNCAN & COCHRANE** (1853), 1 W. R. 538; 1 Pat. App. 217, H. L.

**290. Acknowledgment of drafts for payment of money—Promise to repay money.]**—An instrument, acknowledging the receipt of drafts for the payment of money, & promising to repay the money, is a special agreement & not a promissory note.—**WILLIAMSON v. BENNET** (1810), 2 Camp. 417, N. P.

of  
to pay.—"I hereby acknow-  
having received a copy of  
above account which I accept  
to pay — days  
& if not paid on that date I  
to pay interest at the rate of 10 per  
cent. per annum on the same from that  
date."—*Held*: a promissory note.

**DEAMOND** 30 W. L. R.  
**W. W. R.**

b.

.]—An  
form:

from A. \$500 advance to be repaid at  
expiration of 9 months":—*Held*: a  
negotiable promissory note.—**HAI-  
STAD v. HENSCHMANN** (1908), 18  
Man. L. R. 103.—**CAN.**

c. — To be returned next  
.]—A letter in the following  
form: "You have given me this day  
, which I undertake to return to  
you next week":—*Held*: not a pro-  
missory note.—**HAMILTON v. GOULD**  
, 1 Jebb & S. 432; 11 L. R. 171.

d.

to repay

**291. Promise to pay or cause to be paid.]**—A note, whereby a person promises "to pay or cause to be paid" £130, is a promissory note.—**LOVELL v. HILL** (1833), 6 C. & P. 238, N. P.

**292. Memorandum of deposit of money—To be returned on demand.]**—An instrument was in the following form: "Memorandum. S. has this day deposited with me £500, on the sale of £10,300 3 per cent. Spanish, to be returned on demand":—*Held*: a memorandum of the deposit of money to be returned, & not a promissory note.—**SIBREE v. TRIPP** (1846), 15 M. & W. 23; 15 L. J. Ex. 318; 153 E. R. 745.

*Annotations*:—**Mentd.** **Curlew v. Clark** (1849), 3 Exch. 375; **Cooper v. Parker** (1855), 15 C. B. 822; **Goddard v. O'Brien** (1882), 9 Q. B. D. 37; **Beer v. Foakes** (1883), 52 L. J. Q. B. 426; **Foakes v. Beer** (1884), 9 App. Cas. 605, H. L.; **Bidder v. Bridges** (1887), 37 Ch. D. 406, C. A.; **Re A Debtor, Ex p. London & County Discount Co.** (1909), 100 L. T. 380; **Morris v. Baron**, [1918] A. C. 1, H. L.

**293. Receipt & promise to pay interest thereon.]**—A document was in the following form: "Received £170, for which I promise to pay interest at the rate of 5 per cent."—*Held*: not a promissory note, nor an agreement of the value of £20, but an acknowledgment of a debt of £170.—**TAYLOR v. FIELD** (1847), 2 New Pract. Cas. 221; 9 L. T. O. S. 79.

**294.** —.]—A promissory note was in the following form: "Three months' notice I promise to pay J. H. interest 5 per cent. per annum for £500 value received":—*Held*: a good promissory note for £500.—**HUTLEY v. MARSHALL** (1882), 46 L. T. 186, C. A.

**295. Letter of ratification—Of notes given by infant.]**—A., being a minor, gave two promissory notes to B., who indorsed them to C. When A. came of age, D. called, & showing him the two notes, induced him to sign a letter to C. promising to pay the amount due on both, if he would give time:—*Held*: the letter was a mere ratification, & not a promissory note.—**DORMER v. HOWARD** (1849), 12 L. T. O. S. 457.

**296. Statement of sum lent to be repaid—Incorporated in sale of lease.]**—An agreement between pltf. & debt., for the sale of a lease, concluded with the following clause, signed by both parties: "Pltf. does, at the same time & place, lend to debt. £84 in cash, to be repaid by instalments":—*Held*: this was not a promissory note.

Nothing is more common than to find a promise to pay amongst other stipulations in an agreement. In this case it is clear that a promissory note does not describe the whole of the instrument (**MAULE, J.**).—**MITCHELL v. WESTOVER** (1850), 15 L. T. O. S. 113; 14 Jur. 816.

interest.]—The following document:  
"Received from V. £100 sterling, for  
which we herewith agree to pay him  
4 per cent. per annum. This amount  
to be refunded 12 months after date":  
—*Held*: a promissory note.—**VAL-  
LANOR v. FORBES** (1879), 6 R. (Ct. of  
Sess.)

in the  
terms: "Received from"  
W. £50 "on loan at the rate of 5 per  
cent."—*Held*: not a promissory  
note.—**WATSON v. DUNCAN** (1896), 4  
S. L. T. 75.—**SCOT.**

**297. "Undertake" instead of "promise."—**The directors of a co. gave to H. for value an instrument under the seal of the co., headed "debenture," & stamped as a deed, by which the co. "undertake to pay to the order of J., on July 1, 1867," £1,000, with interest half-yearly, on presentation of the annexed interest warrants:—*Semle*: the instrument was a promissory note.

Apart from the immaterial substitution of "undertake" for "promise," it is the simple & ordinary form of a promissory note (PAGE-WOOD, L.J.).—*Re GENERAL ESTATES CO., Ex p. CITY BANK* (1868), 3 Ch. App. 758; 18 L. T. 894; 16 W. R. 919, L. J.J.

*Annotations*.—*Consol. Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1871), L. R. 11 Eq. 478; *British India Steam Navigation Co. v. I. R. Comrs.* (1881), 7 Q. B. D. 165. *Reid. Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374. *Mentd. Higgs v. Assam Tea Co.* (1869), L. R. 4 Exch. 387; *Re South Essex Estuary Co., Ex p. Chorley* (1870), L. R. 11 Eq. 157; *Re Hercules Inace., Brunton's Claim* (1874), L. R. 19 Eq. 302; *Re Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim* (1883), 24 Ch. D. 85.

#### SUB-SECT. 2.—MUST BE INDORSED WHEN PAYABLE TO MAKER'S ORDER.

See 1882 Act, s 83 (2).

**298. Maker & payee same person.]—**In an action on a promissory note, whereby deft. promised to pay to his order £500 2 months after date:—*Held*: an instrument made payable to the maker's order was not a promissory note within 3 & 4 Anne, c. 9.—*FLIGHT v. MACLEAN* (1846), 16 M. & W. 51; 16 L. J. Ex. 23; 8 L. T. O. S. 103; 153 E. R. 1094.

*Annotations*.—*Reid. Hooper v. Williams* (1848), 17 L. J. Ex. 315. *Mentd. Wood v. Mytton* (1847), 10 Q. B. 805; *Brown v. De Winton* (1848), 6 C. B. 336.

**299. —.]—Held**: 3 & 4 Anne, c. 9, s. 1, extended to a promissory note payable to the maker's own order, so as to make him liable, upon the note, to an indorsee.—*WOOD v. MYTTON* (1847), 10 Q. B. 805; 16 L. J. Q. B. 446; 9 L. T. O. S. 266; 11 Jur. 967; 116 E. R. 306.

*Annotations*.—*Expld. Absolon v. Marks* (1847), 11 Q. B. 19. *Reid. Hooper v. Williams* (1848), 2 Exch. 13. *Mentd. Brown v. De Winton* (1848), 6 C. B. 336.

**300. —.]—To assumpsit** on a promissory note, by which deft. & four other persons jointly & severally promised to pay £750 "to our & each of our order," it was contended that the instrument was uncertain as to the payee, & not a note within 3 & 4 Anne, c. 9, s. 1:—*Held*: the note when indorsed became certain, & the record

showing that deft. had indorsed, enough appeared to warrant judgment for plff.—*ABSOLON v. MARKS* (1847), 11 Q. B. 19; 17 L. J. Q. B. 7; 10 L. T. O. S. 133; 11 Jur. 1010; 116 E. R. 381.

**301. —.]—**An instrument, whereby the maker promises to pay a sum of money to his own order is not a promissory note at all, & not transferable as such within 3 & 4 Anne, c. 9. The effect of indorsement is to perfect the incomplete instrument, making it a binding contract between the maker & indorsee, & it then becomes an assignable note; if the indorsement be in blank it is a note payable to bearer, & properly declared upon as such.—*HOOPER v. WILLIAMS* (1848), 2 Exch. 13; 17 L. J. Ex. 315; 9 L. T. O. S. 80; 12 Jur. 270; 154 E. R. 385.

*Annotations*.—*Appld. Masters v. Barrets* (1849), 2 Car. & Kir. 715. *Reid. Brown v. De Winton* (1848), 6 C. B. 336.

**302. —.]—**A note payable to the maker's own order is not *per se* a negotiable instrument within 3 & 4 Anne, c. 9, s. 1; a payee must be expressly named, or must appear by necessary implication. But, when a note in that form is indorsed in blank, & put in circulation by the maker, it becomes, in effect, a note payable to the bearer.—*BROWN v. DE WINTON* (1848), 6 C. B. 336; 6 Dow. & L. 62; 17 L. J. C. P. 281; 11 L. T. O. S. 329; 12 Jur. 678; 136 E. R. 1281.

*Annotations*.—*Appld. Gay v. Lander* (1848), 17 L. J. C. P. 286. *Expld. Masters v. Barretto* (1849), 8 C. B. 433; *Enthoven v. Hoyle* (1853), 13 C. B. 373. *Reid. Allen v. Sea, Fire & Life Assoc.* (1850), 9 C. B. 574.

**303. —.]—**A declaration stated that deft. made a promissory note payable to his own order, & indorsed it to S. & Co., who indorsed it to plff.:—*Held*: (1) as against the maker & indorser this was a valid promissory note payable to S. & Co. or order; (2) the note before indorsement was in the nature of a promise to pay to the person to whom the maker should afterwards indorse it.—*GAY v. LANDER* (1848), 6 C. B. 336; 6 Dow. & L. 75; 17 L. J. C. P. 280; 11 L. T. O. S. 329; 12 Jur. 678; 136 E. R. 1281.

*Annotation*.—*Expld. Masters v. Barretto* (1849), 8 C. B. 433.

**304. —.]—**A note payable to the order of the maker, & by him indorsed in blank, may be treated as a note payable to bearer; & that notwithstanding there is a memorandum at the foot of the note, indicating a particular place of payment.—*MASTERS v. BARETTO* (1849), 8 C. B. 433; 19 L. J. C. P. 50; 14 L. T. O. S. 153; 13 Jur. 1124; 137 E. R. 578.

**Note by several parties—In favour of one of them & others.]—**See Part XXII., Sect. 5, sub-sect. 2, *post*.

**1. Undertaking to pay.]—**"To G. T., we hereby undertake to pay the exors. of the late J. \$375 on a mtge. they hold against the property, thereby reducing the amount to \$2,000":—*Qu.*: whether the document was a promissory note.—*TRIMBLE v. MILLER* (1888), 18 O. R. 500.—CAN.

—.]—"This is to certify that I, ., hereby agree & bind myself to pay to J. or order, \$1,000, on or about Nov. 25, 1883":—*Held*: a promissory note.—*KENNEDY v. EXCHANGE BANK* (1886), 30 L. C. J. 266.—CAN.

To be worded thus: "This is to certify that I have this day given to "A. "a promise of \$10,000 . . . at my death": not a promissory note.—*v. MERCANTILE TRUST CO. OF*

CANADA, LTD. (1919), 45 O. L. R. 422  
16 O. W. N. 175.—CAN.

#### PART II. SECT. 4, SUB-SECT. 2.

**2981. Maker & payee same person.]—**A note payable to the maker's own order is not a promissory note within the statute of Anne; but when such a note is indorsed in blank by the maker, it becomes a note payable to bearer. It is no ground for motion in arrest of judgment that such instrument has been declared on as a promissory note, as having been indorsed to . . .  
—*VENIS v. HASTINGS* (1860), 4 All. 411.—CAN.

—*II. S. P. BROWN v.* (1849), 5 U. C. R. 621.—CAN.

**298 III. S. P. BURNS v. HARPER**, 6 U. C. R. 509.—CAN.

**298 IV. —.]—**A note payable to the maker's own order may be declared upon as a note to the bearer, but to declare upon such a note that the maker made an instrument in writing promising to pay to his own order would be bad.—*WALLACE v.* (1850), 7 U. C. R. 88.—CAN.

**298 V. —.]—Whether necessary to aver payee's indorsement.]—**In an action by the payee against the maker of a promissory note payable to the order of plff., the declaration did not state that the note had been indorsed:—*Held*: there was no occasion to aver an indorsement by plff. to himself.—*MYERS v. WILKINS* (1860), 6 U. C. R. 421.—CAN.



**SECT. 5.—IRREGULAR INSTRUMENTS.**

**305. Doubt as to whether bill or note—Holder may treat as either.]—**Where an instrument is equivocal between a bill of exchange & a promissory note the holder may treat it as either.—*EDIS v. BURY* (1827), 6 B. & C. 433; 9 Dow. & Ry. K. B. 492; 108 E. R. 511; *sub nom.* *EEDIS v. BERRY*, 5 L. J. O. S. K. B. 179.

*Annotations:—**Appld.* *Saunderson v. Piper* (1839), 5 Bing. N. C. 425. *Expld.* *Lloyd v. Oliver* (1852), 18 Q. B. 471. *Refd.* *Allen v. Sea, Fire & Life Assce.* (1850), 9 C. B. 574; *Peto v. Reynolds* (1854), 2 C. L. R. 491. *Mentd.* *Willans v. Ayers* (1877), 3 App. Cas. 133, P. C.

**306. Instrument in form of note—Addressed to third person—Accepted by such—Promissory note.]—**An instrument which is in the form of a note, but which is in addition addressed to a third person who accepts it, is a promissory note.—*EDIS v. BURY* (1827), 6 B. & C. 433; 9 Dow. & Ry. K. B. 492; 108 E. R. 511; *sub nom.* *EEDIS v. BERRY*, 5 L. J. O. S. K. B. 179.

*Annotations:—**Expld.* *Lloyd v. Oliver* (1852), 18 Q. B. 471. *Refd.* *Saunderson v. Piper* (1839), 5 Bing. N. C. 425; *Allen v. Sea, Fire & Life Assce.* (1850), 9 C. B. 574; *Peto v. Reynolds* (1854), 2 C. L. R. 491. *Mentd.* *Willans v. Ayers* (1877), 3 App. Cas. 133, P. C.

**307. ————.]—**An instrument was in following form: "On demand I promise to pay to A. or bearer £15 for value received," & was addressed by the maker to deft., who wrote across it, "Accepted, J."—*Held*: such instrument might be declared on as a promissory note.—*BLOCK v. BELL* (1831), 1 Mood. & R. 119.

**308. — Accepted by third party.]—**An instrument was drawn in the following form: "Two months after date I promise to pay to T." (pltf.) "or order £90 15s." "H. O." Underneath was written, on the left hand of the instrument, "J. E. O." (deft.). Across it was written, "Accepted, payable S. & Co., bankers, London, E. O." "E. O." was signed by deft.:—*Held*: the instrument might be sued upon as a bill of exchange drawn by H. O. upon, & accepted by, deft.

Such an instrument would be good as a bill of exchange, as against the drawer, even before

acceptance (*LORD CAMPBELL, C.J.*).—*LLOYD v. OLIVER* (1852), 18 Q. B. 471; 21 L. J. Q. B. 307; 19 L. T. O. S. 108; 16 Jur. 833; 118 E. R. 178.

**309. — Headed up as a bank post bill.]—**The directors of a joint-stock bank issued instruments in the following forms: "Union Bank post bill. At 60 days after sight of this our first bill of exchange (second & third of the same tenor & date not paid), we promise to pay, on account of the proprietors of the Union Bank, to the order of C. & Co., the sum of Co.'s rupees, ten thousand. Value received. (Signed), J. R., W. G., directors." *Semle*: such instruments might be declared on, either as promissory notes or bills of exchange.—*FORBES v. MARSHALL* (1855), 11 Exch. 166; 24 L. J. Ex. 305; 25 L. T. O. S. 147; 3 W. R. 480; 3 C. L. R. 933; 156 E. R. 788.

*Annotation:—**Mentd.* *Gordon v. Sea, Fire & Life Assce. Soc.* (1857), 26 L. J. Ex. 202.

**310. Instrument in form of bill—Ordering payment "without acceptance."—**An instrument drawn by A. upon B., requiring him to pay to the order of C. a certain sum at a certain time "without acceptance":—*Held*: a bill of exchange.—*R. v. KINNEAR* (1838), 2 Mood. & R. 117.

*Annotation:—**Folld.* *National Park Bank of New York v. Berggren* (1914), 110 L. T. 907.

**311. — Payable to bearer—Accepted in blank—Afterwards filled in by drawer.]—**An instrument drawn in the form of a bill, payable to bearer, even if accepted in blank, & afterwards filled up by the drawer, may be declared upon by the indorsee, as a promissory note made by the drawer & indorsed by the drawee; at all events, the variance, if any, will be amendable.—*ARMFIELD v. ALLPORT* (1857), 27 L. J. Ex. 42; 6 W. R. 63.

*Annotations:—**Distd.* *M'Call v. Taylor* (1865), 11 Jur. N. S. *Mentd.* *Harvey v. Cano* (1876), 34 L. T. 64; *Carter v. White* (1882), 20 Ch. D. 225.

**312. Memorandum in body of note—That title deeds deposited as security.]—**An instrument which, in other respects, was a promissory note, & had been properly stamped as such before making, contained in the body of it a memorandum that

for payment, protest, notice of protest; a consent by sureties that time of payment might be extended without notice; & an accelerating clause making the whole amount due on failure to pay interest:—*Held*: a negotiable promissory note. *DAVIS v. BUTLER* (1907), 7 W. L. R. 85.—*CAN.*

**P. — That payee may make note payable before maturity.]—**M. gave P. a note payable on a specified date. There was a proviso that "if for any good reason P. should consider this note insecure," P. should have "full power to declare it due & payable at any time":—*Held*: P. had power to make the note payable & actionable, upon the happening of the event mentioned, before maturity by effluxion of time.—*MARSEY MANUFACTURING CO. v. PERRIN* (1892), 8 Man. L. R. —*CAN.*

*Strict*  
**L.]—**A provision in a promissory note payable at a given date, enabling payee, if for any reason he should consider the note insecure, to declare it due & payable at any time, should be construed strictly: & assuming that circumstances have arisen justifying

**PART II. SECT. 5.**

**305 I. Doubt as to whether bill or note—Holder may treat as either.]—**G. drew upon W., requesting him to pay an amount to himself (G.), or order:—*Held*: the instrument could be declared on either as a bill of exchange or promissory note.—*GOLDING v. WATERHOUSE* (1876), 3 Pug. 313.—*CAN.*

**305 II. ————.]—**An instrument in the following terms: "The Oriental Bank Corp., Ltd., Apr. 29, 1889. On demand first of exchange (second of tenor & date being unpaid) to order of "B. Rs. 640 for value For the New Oriental Bank Corp., Ltd. To the New Oriental Corp., Ltd., Bombay:—*Held*: the document was an "ambiguous instrument" within 1881 Act, s. 17, & could be treated either as a note or bill.—*SULLIMAN*

Bom. IND.

1. form of

specialty.]—"For value received, we jointly & severally promise to pay to

W. or bearer, £50. As witness our hands & seals," this Apr. 29, 1856:—*Held*: not a note, but a specialty.—*WILSON v. GATES* (1858), 16 U. C. R. —*CAN.*

**m. Memorandum in body of Direction as to application of promissory note.]—**A note payable to C. or bearer, adding the words, "which when paid is to be indorsed on the mtgo., bearing even date with his note":—*Held*: a negotiable promissory note.—*CHESNEY v. ST. JOHN* (1879), 4 A. R. 150.—*CAN.*

**n. — Containing recitals not promise to pay.]—**A promissory note is not the less a note if it contains a recital which does not in any way qualify the promise to pay a certain amount at a stated time. Such document if otherwise complete is a valid promissory note.—*INTERNATIONAL HARVESTER CO. OF AMERICA v. GRANT* (1907), 4 E. L. R. 1.—*CAN.*

o.

of

for extension

clause.]—A note contained an agreement to pay an attorney's fee if suit was brought thereon; a waiver of



the maker had deposited certain title deeds with the payee as a collateral security. After it was made, it was stamped with a proper mtge. stamp on payment of the penalty:—*Held*: this was an assignable promissory note under 3 & 4 Anne, c. 9, s. 1, & might be sued on by an indorsee, though the mtge. stamp was put on after the making, & though there was no assignment stamp.—*WISE v. CHARLTON* (1830), 4 Ad. & El. 786; 2 Har. & W. 49; 6 Nev. & M. K. B. 364; 6 L. J. K. B. 80; 111 E. R. 979.

*Annotations*:—*Consd. Fancourt v. Thorn* (1846), 10 Jur. 639. *Reid. Storm v. Stirling* (1854), 3 E. & B. 832.

**313. — Reterring to contemporaneous agreement for terms of repayment.**—A promissory note, in which no time for payment is named, but which refers to a contemporaneous agreement for the terms upon which the value received is to be repaid, such agreement showing that the note was to be paid only in case a lease was obtained within a given time, is not a note payable on demand; & a plea setting out this agreement is a good answer to an action on the note, where the note is declared upon as a note payable on demand.—*BROWN v. PRANCE* (1853), 22 L. T. O. S. 98; 2 W. R. 38.

**314. — “As per memorandum of agreement.”**—An instrument was in the following form: “I promise to pay to J. S. or his order, at 3 months after date, £100 as per memorandum of agreement. H. B.”:—*Held*: (1) a promissory note in such form was, on the face of it, an unconditional promise to pay, & was negotiable under 3 & 4 Anne, c. 9; (2) if the effect of the agreement was to make the promise conditional, it was on deft. to show that, by setting out the agreement in his plea.—*JURY v. BARKER* (1858), E. B. & E. 459; 27 L. J. Q. B. 255; 31 L. T. O. S. 177; 4 Jur. N. S. 587; 6 W. R. 660; 120 E. R. 580.

payee in acting upon the provision, it is necessary for him to “declare” the note due & payable before he can sue upon it. It is not sufficient merely to demand payment or security within a stated time, threatening action on default.—*GILL v. YORKSHIRE INSURANCE CO.* (1913), 24 W. L. R. 389; 4 W. W. R. 692.—CAN.

**r. — Agreement to give security.**—An instrument to the following effect: “One year after date, I promise to pay T. or bearer, \$80, & if T. should require additional security for the payment of the above amount, I hereby agree to do so at my expense, & should I not comply with this request, then this note to be considered due from said date”:—*Held*: if a note at all, it would only become due as a note at the expiration of 12 months.—*TURLEY v. ROSEBUSH* (1862), 12 C. P. 380.—CAN.

**312 i. — That title deeds deposited as security.**—An instrument as follows: “On deposit of title-deeds” named below for value received by me, I promise to pay, etc.:—*Held*: a negotiable instrument.—*RAMACHANDRA v. SETHA* (1893), 1 L. R. 17 Mad. 85.—IND.

**payee had lien on chattel sold to maker—Negotiable.**—A promissory note given for the price of a horse provided that the rights of property & possession in the property for which the note was given should remain in the vendor or holder of the note, until the note should be fully paid:—*Held*: this instrument was neither a receipt note, nor a hire

receipt, nor an order for within Lien Notes Act, & that an indorsee of the note was entitled to the horse as against an innocent purchaser for value.—*SUTHERLAND v. MANNIX* (1892), 8 Man. L. R. 641.—CAN.

**t. — Promissory notes stated on their face that they were given for a binder, & that the property therein should remain in the payees until payment of the note in full:**—*Held*: negotiable promissory notes.—*MERCHANTS BANK v. (1894)*, 9 Man. L. R. 623.—CAN.

**u. S. P. CANADIAN v. LIVINGSTON**, 6 E. L. R. 459.—CAN.

**w. S. P. EDGAR v. BARRIS & CHAPMAN**, [1918] 3 W. W. R. 818; 43 D. L. R. 372.—CAN.

**y. — Under Farm Implement Act, 1915.**—A note in the form following: “I promise to pay to the order of T. \$500. Given on account of price of goods.” . . . “The property in & title to said goods which I hereby agree to buy shall remain in the said co. until the purchase price & all notes or other obligations given therefor have been paid in full in cash. This lien note is taken under the” above Act:—*Held*: a promissory note.—*ROBERT BELL ENGINE & THRESHING CO., LTD. v. TOPOLO* (No. 2), [1917] 1 W. W. R. 608.—CAN.

**z. — Not negotiable.**—An instrument in the form of a promissory note, given for price of an article, with the added condition “that the title & right to the possession of the property

**315. — Void if repugnant.**—A proviso in a bill of exchange, drawn by a joint stock co., limiting liability thereunder, is repugnant & void.

Such a notice, being repugnant to the nature of a bill, is not a notice which could in any way affect the holder of the bill (*WOOD, V. C.*).—*Re STATE FIRE INSURANCE CO., Ex p. MEREDITH'S & CONVER'S CLAIM* (1863), 1 New Rep. 510; 32 L. J. Ch. 300; 8 L. T. 146; 9 Jur. N. S. 298; 11 W. R. 416.

**316. — That note given to prevent action.**—A document was in the following form: “I hereby agree to pay you £100 sterling on the 27th inst. to prevent any action against me”:—*Held*: the document was not a promissory note, but was an agreement to pay money for a valid consideration which could be sued upon & was a valuable security.—*R. v. JOHN* (1875), 13 Cox, C. C. 100.

**317. Indorsement on instrument—That note taken as security for all balances—That it should be in force six months.**—Upon an instrument in the common form of a joint & several promissory note, signed by three persons, there was an indorsement written at the time of signing it, stating that the note was taken as a security for all balances to the amount of the sum within specified which one of the three might happen to owe to the payee, that the note should be in force 6 months, & that no money should be liable to be called for sooner in any case. In an action against one of the sureties:—*Held*: the payee could not declare upon the instrument as a promissory note, payable either on demand, or at 6 months after date.—*LEEDS v. LANCASHIRE* (1809), 2 Camp. 205, N. P. *Annotations*:—*Distd. Davies v. Wilkinson* (1839), 10 Ad. & El. 98. *Reid. Clarke v. Percival* (1831), 2 B. & Ad. 660; *Bolton v. Dugdale* (1833), 4 B. & Ad. 619; *Brill v. Crick* 1 Gale, 441; *Mallard v. Page* (1870), L. R. 5 312.

for which this note is given shall remain” in the vendors “until the note is paid” is not a promissory note.—*DOMINION BANK v. WIGGINS* (1894), 21 A. R. 275.—CAN.

**a. S. P. BANK OF HAMILTON v. GILLES, BANK OF HAMILTON v. MURRAY** (1897), 12 Man. L. R. 495.—CAN.

**b. S. P. PRESCOTT v. GARLAND** (1897), 34 N. B. R. 291.—CAN.

**c. S. P. KEDDY v. MORDEN** (1905), 16 Man. L. R. 629; 2 W. L. R. 373.—CAN.

**d. S. P. FRANK v. GAZELLE LIVE STOCK ASSOCIATION**, (1906), 6 W. L. R. 1 6 Terr. L. R. 392.—CAN.

**e. S. P. MOLSON BANK v. HOWARD** (1912), 3 O. W. N. 661; 21 O. W. R. 278.—CAN.

**f. S. P. THEIN v. BANK OF BRITISH NORTH AMERICA** (1912), 20 W. L. R. 192; 1 W. W. R. 795.—CAN.

**g. S. P. DOUGLAS BROTHERS, LTD. v. AUTEN & SCHULTZ** (1913), 24 W. L. R. 676; 4 W. W. R. 989.—CAN.

**h. S. P. DORVAL v. CARRIER** (1916), Q. R. 51 S. C. 343.—CAN.

**k. — Pleading.**—A lien note must not be described in pleading as a promissory note.—*NEW HAMBURG MANUFACTURING CO. v. WEISHROD* (1906), 4 W. L. R. 125.—CAN.

As to lien notes, see, OF GOODS.

**l. Indorsement on instrument of note.**—An on a note of a condition, made before

*Sect. 5.—Irregular Instruments. Sect. 6.]*

**318.** That note given to secure floating balance to one joint & several maker.]—A., B., & C. made a joint & several promissory note for £100, payable to plffs., trustees of a banking co., or their order, on demand. A memorandum, indorsed on the note at the same time, signed by A., B., & C., stated that the note was given to secure floating advances made by the co. to A., from the respective times when such advances had been or might be made, together with commission, etc., not exceeding in the whole, at any one time, £100. In an action by the payees of the note against C., to which he pleaded Stat. Limitations, plffs. proved payments by A., in reduction of the floating balance, within 6 years, & sought to use the memorandum indorsed on the note to show that such payments had reference to the note:—*Held*: it could not be read in evidence without an agreement stamp.—*CHOLMELEY v. DARLEY* (1845), 14 M. & W. 344; 14 L. J. Ex. 328; 5 L. T. O. S. 267; 153 E. R. 507.

**319.** — Undertaking to enlarge time for payment.]—An agreement indorsed on a note, by which plff., the payee, undertakes to enlarge the time for payment specified in the body of the note, cannot be considered as incorporated with the note so as to render an agreement stamp necessary.

The payee of a note indorsed upon it: "My will & desire is, that the money shall not be called in for 2 years, etc., & that if C. shall wish for further time, he shall have it without suit at law until 3 years next after my decease." *Semble*: the words were words of mere indulgence & favour, & did not operate as a defeasance.—*STONE v. METCALFE* (1815), 4 Camp. 217; 1 Stark. 53, N.P.

*Annotation*:—*Apld.* *Brill v. Crick* (1836), 1 M. & W. 232.

**320** — — Stating conditions upon which note given.]—On an action coming on to be tried at the assizes, an agreement in writing was entered into, that the trial should be postponed till the next assizes, on deft. in that action, and A. undertaking to give plff. a promissory note payable on demand, by way of security, in case plff. should recover a verdict against deft., to be given up, if plff., the payee, should fail in that action. The note was given, but after it was signed, a memorandum not signed by the parties was indorsed upon it, stating that the note was given upon the condition mentioned in the agreement:—*Held*: the indorsement was to be considered as merely a marking of the note for the purpose of identification, & not as an incorporating of the agreement, so as to render the note an agreement or a conditional promise.—*BRILL v. CRICK* (1836), 1 M. & W. 232; 1 Gale, 441; Tyr. & Gr. 522; 5 L. J. Ex. 143; 150 E. R. 419.

the note is signed, is part of such note. If made after the signing, it will be considered merely as a memorandum to identify the note.—*McKINNON v. CAMPBELL* (1859), 6 U. C. L. J. O. S. 68.—*CAN.*

m. — — That payment be made by — "Ten days after date, we to pay M. N. £85 10s., for received," upon which, when was indorsed, "It is agreed that this note is to be paid by a lawful mtge., with interest on same, having 3 months to run":—*Held*: not a as between the original parties.

U. C. R. v. LAWRENCE (1849), 5 L.—*CAN.*

n. "Pay A. against cheque."—A cheque was in these terms: "Pay to A. against cheque £4000":—*Held*: the words "against cheque" did not indicate an intention that the cheque should not be negotiable.—*GLEN v.*

(Ct. of Sess.) 1134.—*SCOT.*

**PART II. SECT. 6.**

**324 i.** Whether statement of consideration necessary.]—In an action by the

**321.** — Stating collateral security lodged.]—*FANCOURT v. THORNE*. No. 90, *ante*.

**322.** Undertaking to make no demand during life of maker.]—A promissory note was given with a memorandum indorsed on the back by the payees, to the effect that they undertook that no demand should be made for payment during the life of the maker:—*Held*: plffs. were entitled to recover, if not upon the note itself, at all events on a special count setting forth the effect of the arrangement.—*WATKINS v. FIGG* (1863), 11 W. R. 258.

**323.** Order to transfer funds.]—G., when a retiring partner of the firm of B. & Co., applied, on July 10, 1847, to G. & Co., bankers, for a loan of £20,000 on the security of his share of the partnership assets, & informed them, by letter of the 14th of the same month, that the amount of his share might be taken as about £25,000, & that he was informed by B., his partner, that part of the balance at credit with L. & Co., of which firm he (G.) was a member, on account of B. & Co., would be appropriated towards payment of the amount, & that he would authorise B. to pay the amount to G. & Co., & he thereby bound himself to give to G. & Co. a full & perfect lien thereon. Subsequently B. wrote to G. & Co., through G., stating that B. & Co. had instructed L. & Co. to transfer to them £5,000 of the surplus partnership assets of B. & Co. in their hands, & engaging to pay the remaining balance of G.'s capital. G. sent to G. & Co. a promissory note for £20,000, payable to the order of L. & Co., with the letter of B., as a collateral security, & the £20,000 was advanced:—*Held*: the order contained in the correspondence differed essentially from a cheque on a banker, a bill of exchange, or a promissory note.—*GLYN v. HOOD* (1860), 1 De G. F. & J. 334; 29 L. J. Ch. 204; 1 L. T. 353; 6 Jur. N. S. 153; 8 W. R. 248; 45 E. R. 388, L. JJ.

*See, also, cases in Sect. 2, Sub-sect. 2, ante.*

**SECT. 6.—WHETHER CONSIDERATION MUST BE STATED—MEANING AND EFFECT OF "VALUE RECEIVED."**

1882 Act, s. 3 (4) (b).

**324.** Whether statement of consideration necessary.]—There is no occasion for "value received" to be in a bill of exchange itself.—*EVESKYN v. MERRY* (1728), 1 Barn. K. B. 87; 94 E. R. 60; *sub nom.* *ERESKINE v. MURRAY*, 2 Ld. Raym. 1542.

*Annotations*:—*Mentd.* *Lumley v. Palmer* (1734), 7 Mod. Rep. 216; *Gillett v. Roxburgh* (1837), 6 L. J. Ex. 195.

payee against the maker of a promissory note, it is not necessary to state the liability resulting from the making of the note, or a promise to pay in consideration of such liability.—*DERRY v. CHAMBERS* (1828), 1 Hud. & Br. —*IR.*

**324 ii.** — —.]—Debt will lie against the acceptor of a bill of exchange, & it is not cause of demurrer that the declaration does not state that the bill was "for value received."—*KINAHAN v. PALMER* (1836), 4 Ir. L. Rec. N. S. 324.—*IR.*



**325.** —.]—The words "value received" are not essential to constitute a bill of exchange. —*WHITE v. LEDWICK* (1785), 4 Doug. K. B. E. R. 864.

**326.** —.]—The words "value received" are not at all material; they might be wholly omitted (LORD ELLENBOROUGH, C.J.).—*GRANT v. DA COSTA* (1815), 3 M. & S. 351; 105 E. R. 643.  
—*Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184.

**327.** —.]—Debt against the maker of a promissory note. Demurrer stating in the margin that the note was not expressed to be "for value received":—*Held*: not so frivolous as to warrant its being set aside on motion as irregular.—*CRESSWELL v. CRISP* (1834), 2 Cr. & M. 634; 2 Dowl. 635; 4 Tyr. 991; 3 L. J. Ex. 184; 149 E. R. 914.

**328.** —.]—Debt may be maintained on a promissory note, by the payee against the maker, though the instrument do not express that it is for value received, or for any consideration.—*HATCH v. TRAYES* (1840), 11 Ad. & El. 702; 3 Per. & Dav. 408; 9 L. J. Q. B. 119; 113 E. R. 581.

*Annotation*:—*Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184.

**329. Effect of "value received"**—Court must not disregard.]—The fact that a note is expressed on the face of it to be "for value received," is a circumstance which, though it would probably not be fit to lay great stress upon it, ought not certainly to be entirely disregarded.—*BURKITT v. RANSOM* (1846), 2 Coll. 395; 15 L. J. Ch. 174; 6 L. T. O. S. 452; 10 Jur. 193; 63 E. R. 786.

**330. Meaning of "value received"**—In general.]—A bill was drawn as follows: "Pay to T. G. B., or order, £315, value received," & was subscribed J. B.:—*Held*: the words "value received" meant that J. B. informed the drawee that he drew upon him in favour of T. G. B. because he had received value of T. G. B., as to tell him that he drew upon him, because he, the drawee, had value in his hands, was to tell him nothing.

"Value received" is capable of two interpretations, but the more natural one is, that the party who draws the bill should inform the drawee of a fact he does not know, than of one which he must be well aware (LORD ELLENBOROUGH, C.J.).

The object of inserting the words "value received" is to show that it is not an accommodation bill, but made on a valuable consideration given

for it by the payee (BAYLEY, J.).—*GRANT v. DA COSTA* (1815), 3 M. & S. 351; 105 E. R. 643.

—*Re Lawrence, Mortimore & Schrader*, 4 L. T. 184.

**331.** —.]—*Seemle*: the words "value received" appearing on the face of a bill of exchange form one of the circumstances intended to denote its character, & that a valuable consideration was given for it.—*Re LAWRENCE, MORTIMORE & SCHRADER* (1861), 4 L. T. 184; *affd.*, *sub nom. Re LAURENCE, MORTIMORE & SCHRADER, Ex p. LAURENCE*, 5 L. T. 105, L. JJ.

**332.** — Bill drawn to own order—Value received by drawee.]—A bill of exchange drawn by J. S. to his own order, value received, means value received by the drawee, & if it be alleged in the declaration to be for value received by J. S. it is a variance.

When a man calls upon another by a bill of exchange to pay to his own order, not naming any payee, a sum of money for value received, he cannot be supposed to mean value received of some person in blank, who shall be hereafter ascertained as indorsee: the fair import of the language is that in calling upon the drawee to pay to his order, he intends to put the drawee in mind of the duty which he owes from having received value for it (LORD ELLENBOROUGH, C.J.).—*HIGHMORE v. PRIMROSE* (1816), 5 M. & S. 65; 105 E. R. 975.

—*Distd. Bond v. Stockdale* (1825), 7 Dow. & Ry. K. B. 140; *Tucker v. Barrow* (1828), 7 B. & C. 623. *Consd. Re Cohen, Ex p. Johnston* (1834), 1 Mont. & A. 622, Ct. of R. *Reid. Priddy v. Henbrey* (1823), 1 B. & C. 674; *Clayton v. Gosling* (1826), 5 B. & C. 360; *Bayne v. Hare* (1859), 1 L. T. 40. *Mentd. Wayman v. Hilliard* (1830), 7 Bing. 101; *Allen v. Cook* (1834), 2 Dowl. 546; *Breckon v. Smith* (1834), 1 Ad. & El. 488; *Calvert v. Baker* (1838), 4 M. & W. 417; *Cocking v. Ward* (1846), 1 C. B. 858; *Lane v. Hill* (1852), 21 L. J. Q. B. 318.

**333.** — "Value received in goods"—Value received by acceptor from drawers—No future liability.]—Debt by the drawer against the acceptor of a bill of exchange, payable to drawer or his order, for "value received in goods"—*Held*: the action would lie.

The bill is payable to pliffs. the drawers, or their order, & it imports to be for "value received in goods." The words "value received," in a bill like this, mean value received by the acceptor from the drawers. This acceptance is an admission by debt., not that he may hereafter receive value, but that he previously has received value in goods, & upon such an acceptance the action of debt may be maintained (BAYLEY, J.).—*PRIDDY v. HENBREY* (1823), 1 B. & C. 674; 3

p. — Purchase of patent right.]—A. gave notes for the purchase money on the assignment of a patent right on which the words "given for a patent right" were written. These notes were subsequently cancelled, & in lieu thereof other notes were given, without having such words thereon:—*Held*: the notes were enforceable, those words not being required as between maker & payee.—*GIRVIN v. BURKE* (1889), 19 O. R. 204.—CAN.

q. —.]—A promissory note, the consideration of which was the purchase money of a patent right, did not have the words "given for a patent right" written or printed across its face when taken by the payee, or when transferred by him:—*Held*: void in the hands of an indorsee for value,

with notice of the consideration.—*JOHNSON v. MARTIN* (1892), 19 A. R.

r. —.]—C. half interest in a patent & gave a promissory note therefor. In an action against C.:—*Held*: the note not having the words "given for a patent right" printed across its face it was void.—*CRAIG v. SAMUEL* (1895), 24 S. C. R. 278.—CAN.

**329 i. Effect of "value received"**—In general.]—It is not necessary for the person producing a bill or note to prove consideration if the instrument contains the words "value received," unless fraud be alleged & proved by debt.—*WATERS v. MAHAN* (1883), 8 L. N. 316.—CAN.

**329 ii.** —.]—The words "value received" import *prima facie* a consideration.—*WADDEL v. McCa*, 4 O. S. 191; 3 O. —CAN.

**329 iii.** — Where value not equal to amount of bill.]—A bill for £180 bore to be "for value received." On a suspension of a charge for the whole amount, the holder admitted that it was for value only to the extent of £80, & restricted his charge to that sum:—*Held*: this admission did not deprive him of the ordinary presumption of onerosity to the extent of £80, & that the suspender was not entitled to a proof *pro ut de jure* of no value.—*MERRICK & POLLOCK v. LIVINGSTONE* (1864), 3 Macph. (Ct. of Sess.) 300.—SCOT.



*consideration must be meaning and effect of "value"*

Dow. & Ry. K. B. 105; 1 L. J. O. S. K. B. 211; 107 E. R. 248.

*Annotations:—*Distd. Evans v. Jones (1839), 3 Jur. 705. Exld. Hatch v. Traves (1840), 11 Ad. & El. 702. *Reid.* Re Cohen, *Ex p.* Johnston (1834), 1 Mont. & A. 622, Ct. of R. *Mentd.* Crosswell v. Crisp (1834), 4 Tyr. 991; Watkins v. Wake (1841), 7 M. & W. 488.

**334. — In promissory note—Received from payee—Acknowledgment of debt.]—**A promissory note ran as follows: "On giving 12 months' notice we promise to pay A. B., or order, £200 for value received, with lawful interest":—*Held:* (1) the expression "value received," in a note, imported, "received from the payee;" (2) the note meant: "We acknowledge to owe the payee £200, & promise to pay him that sum, with interest, 12 months after notice."

Here the note is expressed to be for value received, which is an acknowledgment of a debt due (BAYLEY, J.).—CLAYTON v. GOSLING (1826),

5 B. & C. 360; 8 Dow. & Ry. K. B. 110; 108 E. R. 134.

*Annotations:—**Mentd.* Re Dowman & Offley, *Ex p.* Dowman (1826), 2 Gl. & J. 241, L. C.; *Re* West, *Ex p.* Hooper (1834), 3 Deac. & Ch. 655, Ct. of R.; *Re* Wingrove, *Ex p.* Ador, [1891] 2 Q. B. 574, C. A.

**335. — "Given up clothes."—**A document in the following form: "I promise to pay D., or bearer, on demand, £16, at sight, by given up clothes, etc.," is a promissory note, the words "by given up clothes, etc.," being equivalent to value received.—DIXON v. NUTTALL (1834), 1 Cr. M. & R. 307; 6 C. & P. 320; 4 Tyr. 1013; 3 L. J. Ex. 290; 149 E. R. 1097.

**336. — "Value received in shares pursuant to annexed contract"—**Mere statement of consideration—Proof unnecessary.]—The words, "for value received in P. shares pursuant to annexed contract" [in a note], are nothing more than a statement of the consideration for the note; that consideration need not be proved (ERSKINE, J.). *Fox v. FRITH* (1842), Car. & M. 502, N. P.; *subsequent proceedings* 10 M. & W. 131.

## Part III.—Classification of Instruments.

### SECT. 1.—BEARER BILLS, ETC.

*Sec* 1882 Act, ss. 3 (1), 7 (3), 8 (3), 83 (1).

**337. Note indorsed in blank.]—**There is no difference between a note indorsed in blank, & one payable to bearer. They both go by delivery, & possession proves property in both cases (LORD MANSFIELD, C.J.).—PEACOCK v. RHODES (1781), 2 Doug. K. B. 633; 99 E. R. 402.

*Annotations:—**Reid.* Wookey v. Pole (1820), 4 B. & Ald. 1; London and South Western Bank v. Wentworth (1880), 5 Ex. D. 96, D. C. *Mentd.* Gibson v. Minot (1791), 1 Hy. Bl. 569, H. L.; Gill v. Cubitt (1824), 3 B. & C. 468; Snow v. Peacock (1826), 3 Bing. 406; Lang v. Smyth (1831), 7 Bing. 284; Arbouln v. Anderson (1841), 1 Q. B. 498.

**338. — Note payable to maker's order.]—**A declaration alleged that deft. made his promissory note in writing, & thereby promised to pay to the bearer thereof £150, 2 months after date, & delivered the note to K., who thereby became the thereof, & who indorsed & delivered it to who thereby became the bearer thereof. At the trial, pltf. produced in evidence a note payable to deft.'s own order, & indorsed by him in blank, & afterwards indorsed by K. The note bore a 4s. 6d. stamp:—*Held:* though until indorsement the note was an incomplete instrument, upon which no right to sue could exist, yet the effect of the indorsement was to render it a valid promissory note payable to bearer.

Such a note, before indorsement, amounts to a promise to pay the sum therein mentioned to the person to whom the maker should afterwards by indorsement order it to be paid, such indorsement being intended to have the same effect

as if put on a complete note. If the indorsement should be to a particular person, or to A. or his order, it would be a note payable to that person, or to A. or his order; & if in blank, it would be payable to bearer, in like manner as a sum secured by a complete note would have been by similar indorsement.—HOOPER v. WILLIAMS (1848), 2 Exch. 13; 17 L. J. Ex. 315; 12 Jur. 270; 154 E. R. 385.

*Annotations:—**Folld.* Brown v. De Winton (1848), 6 C. B. 336; Masters v. Barrets (1849), 2 Car. & Kir. 715.

**339. —.]—**A note payable to the order of the maker, & by him indorsed in blank, may be treated as a note payable to bearer, & that notwithstanding there is a memorandum at the foot of the note, indicating a particular place of payment.—MASTERS v. BARETTO (1849), 8 C. B. 433; 19 L. J. C. P. 50; 14 L. T. O. S. 153; 13 Jur. 1124; 137 E. R. 578.

*See, further, Part XI., Sect. 3, post.*

**340. Bill indorsed in blank.]—**A declaration alleged that deft. made his bill of exchange, & directed same to B., & required him to pay to deft.'s order £187 15s., & then indorsed the bill to pltf. The bill had been drawn by F., & indorsed by deft. in blank, & having been delivered by deft. to F., was by him taken to a bank, of which pltf. were the managers, where it was received by them in renewal of another bill discounted by them, & drawn & indorsed by the same parties:—*Held:* assuming that an indorser might be treated as a drawer, still the indorsement, being in blank, was equivalent to the drawing of a new bill payable to bearer, & the bill was misdescribed

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a. Foreign note—  
Canada.]—THOMPSON v. SLOAN  
1 Ont. Dig. 781.—CAN.

in

b. Note made in Upper Canada—  
Payable in Montreal—[Inland Note.]—  
BRADBURY v. DOOLE (1841), 1 U. C. R.  
442.—CAN.

c. Drawn in Nova Scotia—Pay-  
able in New Brunswick.]—A promissory  
note made in N.S., & payable in N.B.,  
is a foreign bill.—DELANEY v. HALL  
(1858), 2 Thom. 401.—CAN.

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in the declaration.—**BURMESTER v. HOGARTH** (1843), 11 M. & W. 97; 12 Ex. 178; 152 E. R. 730.

Rep. 139. **Matthews v. Bloxsome** (1864), 4 New  
See, XI., Sect. 3, *post*.

**341.** —.—A., the real owner of a bill of exchange, indorsed it in blank, & delivered it to an attorney for the purpose of his bringing an action upon it in the name of B. The delivery of the bill, indorsed in blank, & payable to bearer, to the agent of B., & B.'s subsequent assent to the action, constituted B. the holder of the bill, & enabled him to sue.—**ANCONA v. MARKS** (1802), 7 H. & N. 686; 31 L. J. Ex. 163; 5 L. T. 753; 8 Jur. N. S. 516; 10 W. R. 251; 158 E. R. 645.

*Annotations*:—**Mentd.** **Bolton Partners v. Lambert** (1889), 41 Ch. D. 295, C. A.; **Durant v. Roberts & Keighley**, **Maxsted**, [1900] 1 Q. B. 629, C. A.

**342. Note payable to A. B. generally.**—A promissory note payable to A. B. generally, is not one payable to bearer on demand but a note payable otherwise than to bearer on demand.—**CHEETHAM v. BUTLER** (1833), 5 B. & Ad. 837; 2 Nev. & M. K. B. 453; 3 L. J. K. B. 9; 110 E. R. 1000.

*Annotations*:—**Refd.** **Dixon v. Chambers** (1835), 5 Tyr. 502. **Mentd.** **Vallance v. Siddel** (1837), 2 Nev. & P. K. B. 78.

**Bearer cheque crossed "account payee."**—See Part XIX., Sect. 2, *post*.

### SECT 2.—ACCOMMODATION BILLS, ETC.

See Part X., Sect. 3 & Sect. 8, sub-sect. 1, *post*.

### SECT. 3.—INLAND AND FOREIGN BILLS, ETC.

See 1882 Act, ss. 4, 83 (4).

See, also, Part XVIII., *post*.

**343. Distinction between foreign & inland bills—Necessity for protest.**—All the difference between foreign bills & inland bills is that foreign bills must be protested before a public notary before the drawer can be charged, but inland bills need no protest (**HOLT, C.J.**).—**BULLER v. CRIPS** (1703), 6 Mod. Rep. 29; 87 E. R. 793.

**344. Drawn in England—On resident abroad.**—A bill drawn in England on A. in Bengal:—**Held**: a foreign bill.—**SALOMONS v. STAVELY** (1783), 3 Doug. K. B. 298; 99 E. R. 663.

**345. ——— Payable to drawer in London—Accepted payable in London.**—A bill of exchange drawn in London, payable to the order of the drawer in London, upon a merchant residing at Brussels, & accepted by him, payable in London, is an inland bill of exchange.—**AMNER v. CLARK** (1835), 2 Cr. M. & R. 468; 1 Gale, 191; 5 Tyr. 942; 4 L. J. Ex. 254; 150 E. R. 202.

**346 i. Drawn in England—Accepted & payable in Ireland.**—A declaration alleged that the drawers made a bill in parts beyond the seas to wit at D. in the county of the city of D. without alleging any foreign locality for the drawing of the bill. The bill purported on the face of it to have been drawn & dated in Bristol & to have

accepted payable at Belfast:—**Held**: (1) the bill was sufficiently described in the declaration; (2) the bill was an inland bill.—**TARBET v.** (1852), 4 Ir. Jur. 277.—**IR.**

— On temporary resident payable in England—English indorsee.]—An Englishman residing in

**346. Accepted payable abroad.**—A bill of exchange was drawn in England, & accepted payable in France by a resident in France, the indorsee & the payee & indorser both being domiciled in England:—**Held**: the bill being payable in France was a French bill.—**ROTHSCHILD v. CURRIE** (1841), 1 Q. B. 43; 4 Per. & Dav. 737; 10 L. J. Q. B. 77; 5 Jur. 865; 113 E. R. 1045.

*Annotations*:—**Refd.** **Bradlaugh v. De Rin** (1868), L. R. 3 C. P. 538. **Mentd.** **Allen v. Kemble** (1848), 6 Moo. P. C. C. 314, P. C.; **Gibbs v. Fremont** (1853), 9 Exch. 25; **Hirschfeld v. Smith** (1866), L. R. 1 C. P. 340; **Tucker** (1867), L. R. 3 Q. B. 77; **Rouquette v. Overmann** (1875), L. R. 10 Q. B. 525; **Horne v. Rouquette** (1878), 3 Q. B. D. 514, C. A.; **Casanova v. Meier** (1885), 1 T. L. R. 213.

**347. ——— Last indorsement to Frenchman in France.**—A bill for £250 was drawn in England payable to the drawer's order, directed to & accepted by the drawee in France, payable in France, & indorsed by the drawer in blank, & by him delivered to deft. in England. Deft. indorsed it in blank, & delivered it to pltf. in England, & he indorsed & delivered it to a banker in France for presentment. The bill was presented & dishonoured:—**Held**: a notice of dishonour given to deft. according to the formalities & within the time prescribed by the French law, was a good notice, upon the authority of **v.**

**No. 346, supra.**—**v. SMITH** (1866), L. R. 1 C. P. 340; Har. & Ruth. 284; 35 L. J. C. P. 177; 14 L. T. 886; 12 Jur. N. S. 523; 14 W. R. 455.

*Annotations*:—**Col.** **Rouquette v. Overmann** (1875), L. R. 10 Q. B. 525. **Expld.** **Horne v. Rouquette** (1878), 3 Q. B. D. 514, C. A. **Refd.** **Bradlaugh v. De Rin** (1868), L. R. 3 C. P. 538. **Mentd.** **Allatini v. Abbott** (1872), 26 L. T. 746.

**348. Written & accepted in England—Transmitted to drawer abroad for his signature.**—Where the body of a bill is written, & the acceptance of it made in England, yet if it be afterwards transmitted to the drawer abroad for his signature, & it is there drawn, the bill is a foreign bill.—**BOEHM v. CAMPBELL** (1818), Gow, 55, N. P.; *proceedings*, (1819), 8 Taunt. 679.

**349. Drawn in Ireland—On resident in England.**—A bill of exchange drawn in Ireland upon a person in England is not an inland bill.—**MAHONEY v. ASHLIN** (1831), 2 B. & Ad. 478; 9 L. J. O. S. K. B. 265; 109 E. R. 1220.

**350. Drawn in France—Payable in England.**—A bill of exchange, drawn in France, but made payable in England, is an English bill. **Qu.**: whether a bill drawn in France by an Englishman upon another Englishman, & accepted generally in that country, is a French or English bill.

A bill drawn at Paris, by B., upon deft., both Englishmen, & accepted by deft., payable at No. 2, Hanover Square, is a bill not a foreign bill at all in respect of the place of payment, but an English bill, England being the place where the promise was to be performed.—**BOUGEREAU v. BRETT** (1850), 15 L. T. O. S. 302.

London, drew a bill on a temporarily residing there, who accepted it payable in London. The bill was indorsed to an English indorsee, who charged the acceptor on it in Scotland:—**Held**: a foreign bill in the sense of Stat. 1681, c. 20.—**MACK v. HALL** (1854), 17 Durl. (Cl. of 164; 27 Sc. Jur. 65.—**SCOT.**



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**351. — Accepted in England—Indorsed in France & sent to Englishman in England.]—**Bills of exchange were drawn in France by a domiciled Frenchman in the French language, in English form, on an English co., who duly accepted them. The drawer indorsed the bills & sent them to an Englishman in England:—*Held*: the acceptor could not dispute the negotiability or the bills by reason of the indorsements being invalid according to French law.—*Re MARSEILLES EXTENSION RY. & LAND CO., SMALLPAGE'S & BRANDON'S CASES* (1885), 30 Ch. D. 598; 55 L. J. Ch. 116; 1 T. L. R. 527.

*Mentd.* *Re London Metallurgical Co.*, [1895] 1 Ch. 768; *Re Bankes, Reynolds v. Ellis*, [1902] 2 Ch. 333; *Embiricos v. Anglo-Austrian Bank*, [1905] 1 K. B. 677, C. A.

**352. Drawn abroad in blank—Transmitted to agent in England—Blanks filled up & accepted in England.]—**A., in Bavaria, signed, as drawer, a blank form of a bill of exchange, & sent it with a consignment of goods to his correspondent in London, for acceptance by the purchaser of the goods. The correspondent filled up the blanks by inserting the date, amount, etc., & having got the bill accepted by deft., applied it to his own purposes, when it was *bona fide* indorsed to pltf.:—*Held*: the bill was not an inland bill.—*BARKER v. STERNE* (1854), 9 Exch. 684; 23 L. J. Ex. 201; 23 L. T. O. S. 95; 2 W. R. 418; 2 C. L. R. 1020; 156 E. R. 293.

*Annotation*:—*Mentd.* *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777, H. L.

**353. Note made in Scotland—Indorsed by payee to plaintiff—No evidence of place of indorsement.]—**L. made a promissory note in Scotland to defts.' order & delivered it to them, & they indorsed it to pltf. It did not appear where the indorsement was made:—*Held*: an inland note.—*BONAR v. MITCHELL* (1850), 5 Exch. 415; 19 L. J. Ex. 302; 155 E. R. 181.

**354. Evidence contradicting bill being drawn abroad—Bill dated at Hamburg.]—**In an action by indorsee against acceptor, deft. called evidence to show that the bill, though dated at Hamburg, was in fact drawn in London, and was void for want of a stamp:—*Held*: the evidence was rightly admitted.—*JORDAINE v. LASHBROOKE* (1798), 7 Term Rep. 601; 101 E. R. 1154.

*Annotation*:—*Mentd.* *Doddington v. Hudson* (1823), 1 Bing. 257.

**355. — Drawer in England at date of bill.]—**To prove that a bill of exchange, purporting to be drawn abroad, was in point of fact drawn in England, & is void for want of a stamp, it is not sufficient barely to shew that the drawer was in England at the time the bill bears date.—*ABRAHAM v. DU BOIS* (1815), 4 Camp. 269, N. P.

**356. — Bill purporting to be drawn in France.]—**If an action is brought on a bill of exchange not having any English stamp, & purporting to be drawn at Paris, deft. will be entitled to a verdict, if it appear from the evidence that pltf. must have been in England on the day on which it purports to have been drawn; but it will be sufficient to enable pltf. to recover,

if the bill was drawn at a place in France nearer to England than Paris, though it be dated from Paris.—*BIRÉ v. MOREAU* (1826), 2 C. & P. 376, N. P.; *subsequent proceedings* (1827), 4 Bing. 57.

**357. — At what stage of proceedings receivable.]—**Where the admissibility of a bill of exchange, purporting to be a foreign bill, & stamped accordingly, was objected to on the ground that, though it purported to be drawn abroad, it was in fact an inland bill, drawn in London, & evidence was offered to prove that fact:—*Held*: the judge ought to have received the evidence in that stage of the cause, & decided upon the admissibility of the instrument, & not to have received the evidence afterwards as part of deft.'s case, & submitted it to the jury.—*BARTLETT v. SMITH* (1843), 11 M. & W. 483; 12 L. J. Ex. 287; 1 L. T. O. S. 149; 7 Jur. 448; 152 E. R. 895.

*Annotations*:—*Mentd.* *Doe d. Jenkins v. Davies* (1847), 10 Q. B. 314; *Moore v. Garwood* (1849), 4 Exch. 681, Ex. Ch.; *Arnold v. Hamel* (1854), 9 Exch. 404; *Boyle v. Wiseman* (1855), 11 Exch. 360; *Harris v. G.W. Ry. Co.* (1876), 1 Q. B. D. 515; *R. v. Colclough* (1882), 15 Cox, C. C. 92, C. C. R.

**358. In action by indorsee against acceptor.]—**In an action by an indorsee against the acceptor of a bill of exchange, which purports to be drawn abroad, deft. may give evidence of its having been drawn in England to shew that it was void for want of an inland stamp.—*STEADMAN v. DUHAMEL* (1845), 1 C. B. 888; 14 L. J. C. P. 270; 5 L. T. O. S. 391; 135 E. R. 792.

*Annotation*:—*Mentd.* *Cave v. Mills* (1862), 6 L. T. 650.

**359. Evidence to show bill drawn abroad—Bill seen abroad immediately after its date—Unnecessary to show that it was then unaccepted.]—**In an action on a bill purporting to have been drawn by A., resident abroad, upon B. in England, pltf. having proved that it was seen abroad immediately after the date of it:—*Held*: it was not necessary, in order to show that it was a foreign bill, also to prove that the bill was then in an unaccepted state.—*DEMPILLIERS v. HOLDEN* (1830), 2 Har. & W. 394.

**360. Action on foreign bill—Allegation necessary that bill made abroad.]—**A declaration against the drawer or indorser of a foreign bill of exchange must allege that the bill was made in parts beyond the seas; & where the declaration omitted such allegation, & deft. pleaded that he did not indorse such inland bill:—*Held*: the plea was good.—*ARMANI v. CASTRIQUE* (1844), 13 M. & W. 443; 2 Dow. & L. 432; 14 L. J. Ex. 36; 153 E. R. 185.

*Annotations*:—*Mentd.* *MacGregor v. Rhodes* (1856), 6 E. & B. 266; *Ellis v. M'Henry* (1871), L. R. 6 C. P. 228; *Re Nelson, Ex p. Dare & Dolphin*, [1918] 1 K. B. 459, C. A.

*See, further, Part XVIII., post.*

**SECT. 4.—DEMAND AND SIGHT BILLS, ETC.**

*See* 1882 Act, ss. 10, 83.

**361. What bills, etc., are "demand" bills, etc.—Bill payable at sight.]—**A bill of exchange, payable at sight, is not a bill payable on demand,

**PART III. SECT.**

a. What bills or notes are bills—No time of

promissory note is payable on demand, where no time of payment is specified.—*THORNE v.* (1844), 2 Kerr, 557.—CAN.

f. — Admissibility of evidence to show agreement fixing due date.]—1906 Act, s. 23, does not make a note, where no time is expressed for



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within the exception in 22 Geo. 3, c. 49.—*JANSON v. THOMAS* (1784), 3 Doug. K. B. 421; 99 E. R. 728.

See, now, 1882 Act, s. 10 (1) (a).

**362. — Note referring to contemporaneous agreement as to conditions under which payable.]**—A promissory note, in which no time for payment is named, but which refers to a contemporaneous agreement for the terms upon which the value received is to be repaid, such agreement showing that the note was to be paid only in case a lease was obtained within a given time, is not a note payable on demand.—*BROWN v. PRANCE* (1853), 22 L. T. O. S. 98; 2 W. R. 38.

**363. — Draft for transmission abroad—Due on first foreign post day—Custom of bill brokers.]**—A draft drawn for the amount of bills of exchange, purchased for transmission abroad, which amount by the usage of bill brokers is due on the first foreign post-day next after the purchase, & which draft was dated as of that day, is an order for the payment of money on demand, & under 33 & 34 Vict., c. 97, falls within the description in the schedule to that Act, "Bill of exchange, payable on demand."—*MISA v. CURRIE* (1876), 1 App. Cas. 554; 45 L. J. Q. B. 852; 35 L. T. 414; 24 W. R. 1049, H. L.

*Annotations:—*Mentd. *Hogarth v. Latham* (1878), 47 L. J. Q. B. 339, C. A.; *McLean v. Clydesdale Banking Co.* (1883), 9 App. Cas. 95, H. L.; *Stott v. Fairlamb* (1883), 53 L. J. Q. B. 47, C. A.; *Re Matthew, Ex p. Matthew* (1884), 12 Q. B. D. 506, C. A.; *Elwell v. Jackson* (1885), 1 T. L. R. 454, C. A.; *Re Romer, Ex p. Snell* (1893), 62 L. J. Q. B. 610, C. A.; *Fleming v. Bank of New Zealand*, [1900] A. C. 577, P. C.; *Nash v. De Freville* (1900), 69 L. J. Q. B. 484, C. A.; *Banbury v. Bank of Montreal*, [1918] A. C. 626, H. L.

**364. — Bill blank as to date—Payable . . . "months" after date.]**—A bill purporting to be drawn by A. was accepted by B., when it was in blank as to date & "payable . . . months after date." It was subsequently dated Sept. 24, 1887, & made payable 18 months after date:—*Held*: it was not a bill payable on demand, for it was at best a 2 months' bill.—*MORGAN'S LTD. v. HESKETH* (1890), 6 T. L. R. 162, D. C.

### SECT. 5.—JOINT AND SEVERAL BILLS, ETC.

See 1882 Act, s. 85.

**365. Note beginning "I promise"—Signed by two persons.]**—A promissory note signed by two persons, & beginning "I promise, etc.," is joint & several.—*MARCH v. WARD* (1792), Peake, 177, N. P.

*Annotations:—*Expld. & Apld. *Hall v. Smith* (1823), 1 B. &

payment, a demand note by presumption only, & parol evidence is inadmissible of an agreement fixing a due date for such note.—*POLANUK v. OSTERBERG*, [1919] 1 W. W. R. 394.—CAN.

—*A promissory note, Jan. 12: "On demand I promise to pay on Feb. 15 without interest & after Feb. 15, with interest," is payable on demand from the day of its date.*—*BACHAND v. LALUMIERE* (1902), Q. R. 21, S. C. 449.—CAN.

**h. — Cheque not drawn upon chartered bank.]**—An instrument in the form of a cheque, but not drawn upon a chartered bank, is a bill of exchange

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payable on demand, & is subject to Act, the Law Merchant & the Common Law.—*COLLINGS v. CALGAMY* (1916), 34 W. L. R. 6; 10 W. W. R. 1; *affd.* (1917), 55 S. C. R. 406.—CAN.

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**365** by more than one "I promise to pay," signed by two, is joint & several.—*ORRINGTON v. FRETS* (1867), 26 U. C. R. 627.—CAN.

**365 II. S. P. BETH DAVID TION OF ROMANIAN JEWS v. BACKMAN** (1906), Q. R. 31 S. C. 23.—CAN.

*L. Note apparently joint—*

v. (1816), Holt, N. P.

**366. —**—*A note beginning "I promise to pay," signed by two parties, is joint & several.*—*CLERK v. BLACKSTOCK* (1816), Holt, N. P. 474, N. P.

*Annotations:—*Apld. *Hall v. Smith* (1823), 1 B. & C. 407. Mentd. *Wright v. Kingshaw* (1842), 6 Jur. 857; *Re Smith, Ex p. Yates* (1857), 27 L. J. Rcy. 10 n.; *Steele v. McKinlay* (1880), 29 W. R. 17, H. L.

**367. — Alternative "signature."—**A note stated that J. S. promised to pay to A. B., or order, a certain sum, & was signed J. S. or else J. G.:—*Held*: this was not a promissory note by J. G.—*FERRIS v. BOND* (1821), 4 B. & Ald 670; 106 E. R. 1085.

*Annotation:—*Repld. *Palmer v. Pratt* (1824), 2 Bing. 185.

**368. — Signed by one partner for himself & partners.]**—A promissory note, beginning "I promise to pay," was signed by one member of a firm for himself & his partners:—*Held*: the party signing was severally liable to be sued upon the note.—*HALL v. SMITH* (1823), 1 B. & C. 407; 2 Dow. & Ry. K. B. 584; 1 L. J. O. S. K. B. 142; 107 E. R. 151.

—*Obtd. Re Clarke, Ex p. Buckley* (1845), 14 M. & W. 469; I think *Hall v. Smith* cannot be supported (*PARKER, B.*); *MacLae v. Sutherland* (1854), 3 E. & B. 1. If *Hall v. Smith* could be supported, it would be no authority to show that a signature in the name of the firm is always necessary to create a joint liability (*LORD CAMPBELL, C.J.*). *Repld. Re Clarke, Ex p. Christie* (1844), 3 Mont. D. & De G. 736, Ct. of R.

**369. —**—*J. C., R. M., J. T. carrying on business as bankers, & in the following form was signed by R. M.: "I promise to pay bearer, on demand, £5, value received. For J. C., R. M., J. P., & T. S. R. M.":—Held*: the holder of the note had not a separate right of action against the party so signing, but the firm were liable.—*Re CLARKE, Ex p. BUCKLEY* (1845), 14 M. & W. 469; 14 L. J. Ex. 341; 153 E. R. 559.

*Annotations:—*Distd. *Nicholls v. Diamond* (1853), 9 Exch. 154. *Repld. MacLae v. Sutherland* (1854), 3 E. & B. 1.

See, also, cases in Part IX., Sect. 5, *post*.

**370. Note expressed to be joint only—Whether intended to be joint & several.]**—A joint promissory note, signed "J. & J. E., J. P., surety," was given to a creditor of the firm of J. & J. E., J. P. died, J. & J. E. being both alive, one of whom afterwards became bkpt., & the other insolvent:—*Held*: the ct. would not alter the promissory note by making it joint & several, as nothing more was intended than that J. P. should be jointly liable.—*RAWSTONE v. PARR* (1827), 3 Russ. 539; 38 E. R. 678, L. C.

*Annotations:—*Consd. *Other v. Iveson* (1855), 1 L. J. 568. *Repld. Jones v. Beach* (1842), 2 De G. M. & G. 886, L. J. J. Mentd. *Richardson v. Horton* (1843), 12 L. J. Ch. 233.

*joint & several.]*—In an action on a promissory note made by two persons, *defts. failed to appear & plead. Pltff. asked for judgment against them*

*tion of the makers of a promissory note, which is not expressed to be the several note of each, is joint only.*—*NOBLE v. FORGRAVE* (1899), Q. P. 17 S. C. 234.—CAN.

*m. S. P. DAGNEAU v. DECARIE* (1906), 8 Q. P. R. 141.—CAN.

*n. S. P. PERRAULT v.* (1886), 14 R. L. O. S. 604.—CAN.

*o. S. P. BROUSSEAU v. JODOIN* (1917), Q. R. 52 S. C. 38.—CAN.

## 50 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 5.—Joint and several bills, etc. Part

**371. Note joint & several—Rule of society requiring joint note.]**—One of the rules of a loan society directed that the repayment of loans should be secured by the joint promissory note of the borrower & his sureties, but gave a form of note which was joint & several:—*Held*: a joint & several note was a note made in pursuance of the rules of the society, so as to come within the exemption from stamp-duty created by 5 & 6 Will. 4, c. 23, s. 7.—*BRADBURN v. WHITBREAD* (1843), 5 Man. & G. 439; 6 Scott, N. R. 283; 12 L. J. C. P. 218; 7 J. P. 241; 7 Jur. 629; 134 E. R. 685.

*Annotation*:—*Mentd.* *Dewhurst v. Clarkson* (1854), 3 E. & B. 194.

**372. Note purporting to bind parties severally—Joint liability.]**—An action was brought upon an instrument, in the following form, dated Aug. 1, 1846: "We directors of the R. Bank of A., for ourselves & the other shareholders of the co., jointly & severally promise to pay to W., or bearer, on Aug. 1, 1851, £200 for value received on account of the co.," signed by three directors. Defts. were two directors, one of whom had signed the instrument, & four of the shareholders of the co., which was an unregistered joint-stock co.:—*Held*: assuming the directors to have authority to bind the co. by such an instrument, the whole of defts. were jointly liable upon it, notwithstanding that it purported also to bind them severally, which it could not do, & notwithstanding that the note was not given in the name of the partnership firm.—*MACLAE v. SUTHERLAND* (1854), 3 E. & B. 1; 23 L. J. Q. B. 229; 22 L. T. O. S. 254; 18 Jur. 942; 2 W. R. 161; 2 C. L. R. 1320; 118 E. R. 1038.

*Annotations*:—*Reid.* *Lindus v. Melrose* (1858), 3 H. & N. 177, Ex. Ch. *Mentd.* *Re Royal Bank of Australia, Ex*

*p. Walker* (1854), 23 L. T. O. S. 74; *Gardner v. Walsh* (1855), 1 Jur. N. S. 828; *Re Boyd, Ex p. Wryghte* (1856), 26 L. J. Boy. 33; *Lindus v. Melrose* (1857), 2 H. & N. 293.

*See, also, cases in Part IX., Sect. 2, post.*

**373. Cheque signed by three—Joint liability.]**—A banking co. advanced £500 to W., A. & T., three brothers, on a cheque signed by them. W. died, having devised his real estate upon trust for sale, & leaving his brothers his exors. A. & T. became insolvent, & a part of the £500 being unpaid, the bank filed a bill to obtain payment of their debt out of the proceeds of the sale of W.'s real estate:—*Held*: the liability upon the cheque was joint only, & not joint & several, & W. having died before his brothers, his estate was not chargeable with the debt.—*OTHER v. IVESON* (1855), 3 Drew. 177; 3 Eq. Rep. 562; 24 L. J. Ch. 654; 25 L. T. O. S. 61; 1 Jur. N. S. 568; 3 W. R. 332; 61 E. R. 870.

*Annotations*:—*Reid.* *Beresford v. Browning, Browning v. Beresford* (1875), L. R. 20 Eq. 564. *Mentd.* *National Soc. for the Distribution of Electricity by Secondary Generators v. Gibbs*, [1899] 2 Ch. 289.

**374. One party an infant.]**—Pltf. sued defts., father & son, on a promissory note given in respect of a loan to the son, who was under age when the money was advanced to him. The father joined in the note in order to facilitate the transaction, understanding that the debt would be paid when the son came of age. It appeared that in all probability pltf. knew that the son was under age:—*Held*: the true meaning of the transaction was that the father acted as principal borrower, & although by Infants' Relief Act, 1874 (c. 62), the son was not liable, the father was liable as principal.—*WAUTHIER v. WILSON* (1912), 28 T. L. R. 239, C. A.

**Liability on joint & several note.]**—*See Part XIII., Sect. 10, post.*

**Discharge of parties to joint & several notes & acceptances.]**—*See Part XIV., Sect. 9, post.*

## Part IV.—Date of Instrument.

### SECT. 1.—IN GENERAL.

*See* 1882 Act, ss. 12, 13.

**375. Date presumed true date.]**—The date upon a promissory note made by bkpt. is *prima facie* evidence to show that the note existed before the act of bkpcy. was committed, so as to establish a petitioning creditor's debt in an action by the assignees.—*TAYLOR v. KINLOCH* (1816), 1 Stark. 175, N. P.

*Annotations*:—*Consd.* *Smalcombe v. Bruges* (1824), 13 Price 136. *Fold.* *Obbard v. Betham* (1830), Mood. & M. 483. *Consd.* *Wright v. Laineon* (1837), 3 M. & W. 739. *Reid.* *Anderson v. Weston* (1840), 8 Scott,

**376.** —.]—It is *prima facie* evidence that a promissory note was in existence before an act of bkpcy., that it is proved to have been in existence before the docket is struck, & bears date,

on the face of it, before the act of bkpcy.—*OBARD v. BETHAM* (1830), Mood. & M. 483, N. P.

**377.** —.]—A bill of exchange must, in the absence of evidence to raise a presumption to the contrary, be taken to have been drawn on the day on which it bears date.—*ANDERSON v. WESTON* (1840), 6 Bing. N. C. 296; 8 Scott, 583; 9 L. J. C. P. 194; 4 Jur. 105; 133 E. R. 117.

*Annotations*:—*Consd.* *Morgan v. Whitmore* (1851), 6 Exch. 16; *Butler v. Mountgarret* (1859), 7 H. L. Cas. 833. *Reid.* *Davies v. Lowndes* (1843), 6 Man. & G. 471; *Potter v. Glossop* (1848), 2 Exch. 191; *Angell v. Worsley* (1849), L. T. O. S. 428. *Mentd.* *Roberts v. Bethell* (1852), 22 L. J. C. P.

—.]—The statement in a declaration on a promissory note, that deft., on a certain day, made his promissory note, does not require proof that the note bore the date on that day. *Qu.*:

40 So. L. R. 78.—SCOT.

*Held*: they were liable *separatim* in *solidum*.—*HENDERSON, SONS & CO.*, 375

SECT. 1.  
true

date of a promissory note  
proof of itself of the date on which it  
was made.—*HUTCHIN v. COHEN &*  
*COHEN* (1869), 14 L. C. J. 83.—CAN.



## PART IV.—DATE OF INSTRUMENT.

if it require proof that the note was actually made on the day named.—*SMITH v. LORD* (1845), 2 Dow. & L. 759; 14 L. J. Q. B. 112; 9 Jur. 450.

**379.** — presumption is, that every cheque is drawn on the date stated (*WILDE, C.J.*).—*DOE d. CHURCH v. PONTIFEX* (1850), 9 C. B. 229; 19 L. J. C. P. 145; 14 L. T. O. S. 396; 14 Jur. 603; 137 E. R. 881.

—*Mentd. Hunter v. Bowyer* (1850), 15 L. T. O. S.

**380.** —.—There is a presumption that an instrument is drawn at the time of its date.—*LAWS v. RAND* (1857), 3 C. B. N. S. 442; 27 L. J. C. P. 76; 4 Jur. N. S. 74; 140 E. R. 812.

*Annotation*.—*Mentd. Heywood v. Pickering* (1874), L. R. 9 Q. B. 428.

**381.** — Representation by drawer that bill drawn on another date—Not equitable defence.]—To a count on a bill, by drawer against acceptor, deft. pleaded for "a defence on equitable grounds," that the bill declared on, which purported to have been drawn on July 12, 1855, ought to have been, & was represented by plff. to be, drawn on July 25, & that the action was commenced before the bill would have been due, if properly dated:—*Held*: the plea should be set aside, on the ground that it disclosed no equitable defence.—*DRAIN v. HARVEY* (1855), 17 C. B. 257; 25 L. J. C. P. 81; 26 L. T. O. S. 106; 139 E. R. 1069.

**382.** — Presumption may be rebutted.]—Though it may be true that you may offer any evidence to show the truth, where it is said that a bill is made to appear dated unfairly, to show that it really was dated on a particular day, yet, so long as that remains without explanation, we may fairly suppose the bill bears date the day on which, in the declaration, it is stated to be made (*LORD ABINGER, C.B.*).—*OWEN v. WATERS* (1836), 2 M. & W. 91; 5 Dowl. 324; 2 Gale, 208; 6 L. J. Ex. 13; 150 E. R. 682.

*Annotations*.—*Mentd. Spencer v. Newton* (1837), 1 Jur. 381; *Granger v. Dacre* (1844), 12 M. & W. 431; *Shepherd v. Shepherd* (1845), 1 C. B. 849; *Plumer v. Constable* (1846), 8 L. T. O. S. 145; *Barnes v. Keane* (1850), 15 Q. B. 75; *Brooks v. Jennings* (1866), L. R. 1 C. P. 476.

**383.** Memorandum as to date of maturity.]—A promissory note, payable at 2 months,

**1.** — Whether presumption may be rebutted.]—The date of a promissory note is proof that the note was made on such date: circumstances in which:—*Held*: the party could not prove that the note had been made on a day posterior to its date, & that in consequence it fell within the operation of a subsequent deed of compromise between resps. & their creditors, among whom was applt.—*EVANS v. CROSS* (1866), 15 L. C. R. 86; 16 L. C. R. 469; 2 L. C. L. J. 79.—CAN.

**382 ii.** —.—Deft., by a policy of fire insurance dated Sept. 7, 1909, agreed to pay plff. for losses caused to his property by fire after payment of the premium. The policy provided that if any fraudulent device should be used by plff. to obtain any benefit under the policy the policy should be forfeited. On Sept. 6 plff. signed & handed to H. an insurance agent, a proposal for the insurance but no premium was then paid. On Sept. 6 deft. sent plff. a demand for payment of the premiums, & renewed the demand by letter on Nov. 10 & Dec. 9, enclosing an account. On Dec. 14 the property was destroyed by fire. On

Dec. 15 plff. gave H. a cheque dated Dec. 13 for the amount of the premium, which H. handed to defts. on the same day, & which defts. refused to accept:—*Held*: upon the whole of the evidence, there being evidence that the cheque was not drawn on the day it was dated, the jury were justified in finding that the plff. had adopted a fraudulent device to obtain a benefit under the policy.—*NEWIS v. GENERAL ACCIDENT & ASSURANCE CORPN.* (1910), 11 C. L. R. 620.—AUS.

**382 iii.** —.—A bill bore date Sept. 14, without any year being expressed, a year appeared on the bill stamp:—*Held*: the date on the bill stamp, proving that the bill was not written before such & such a year, supplemented the month & day of the month mentioned in the bill.—*SPRINN & KNOX v. SAMPLE* (1901), 9 S. L. T. 153.—SCOT.

—There is strong a presumption that a promissory note was made on or after the date of the stamp impressed upon it that a verdict obtained upon the oath of an interested party that the note was made previous to such date, was set aside as

bore date Jan. 1, 1854. Across the note was written, in the handwriting of the maker before it was negotiated, "Due Mar. 4, 1855":—*Held*: the note upon its face showed that it was not due till Mar. 4, 1855, & it was not overdue when indorsed to plff.—*FITCH v. JONES* (1855), 5 E. & B. 238; 24 L. J. Q. B. 293; 25 L. T. O. S. 160; 1 Jur. N. S. 854; 3 W. R. 507; 3 C. L. R. 1226; 119 E. R. 470.

*Annotations*.—*Mentd. Hall v. Featherstone* (1858), 3 H. & N. 284; *Beeston v. Beeston* (1875), 1 Ex. D. 13; *Thacker v. Hardy* (1878), 4 Q. B. D. 685; *Read v. Anderson* (1882), 10 Q. B. D. 100; *Bridger v. Savage* (1885), 15 Q. B. D. 363; *Lilley v. Rankin*, *Rankin v. Lilley & Baird* (1886), 56 L. J. Q. B. 248; *Galland v. Hall* (1888), 4 T. L. R. 761.

Time for acceptance.]—Part VI., Sect. 4, post.

**384. Bill made on Sunday—Sunday Observance Act, 1677 (c. 7).**—*Semble*: a bill made & accepted on a Sunday would not be void, it being an act not in the exercise of an ordinary calling within the above Act.—*BEGGIE v. LEVI* (1830), 1 Cr. & J. 180; 1 Tyr. 130; 9 L. J. O. S. Ex. 51; 118 E. R. 1383.

*See, generally, TIME.*

Legality of consideration, see Part X., Sect. 6.

**Bill ante-dated—Effect on authority to fill up blank.**—See Part VII., Sect. 1.

**385. Bill undated—Presumed to be dated when drawn.**—In an action on a foreign bill of exchange, if the date be omitted, the ct. will intend it dated at the time it is stated to have been drawn.—*DE LA COURTIER v. BELLAMY* (1680), 2 Show. 422; 89 E. R. 1019.

*Annotations*.—*Follid. Hague v. French* (1802), 8 Bos. & P. *Reid. Smith v. Lord* (1845), 14 L. J. Q. B. 112.

**386.** —.—If a bill of exchange be made payable 2 months after date, & no date be expressed, the ct. will intend it to be payable 2 months after the day on which it was made.

The first count of a declaration stated that deft. on such a day drew a bill of exchange, bearing date the day & year aforesaid, payable 2 months after date. The second count stated that afterwards, on the day & year aforesaid, deft. drew a

the weight of evidence, the note purported to be dated the day on which it was so sworn to have been made, & there was no evidence the stamp to show that such date not the true date.—*JONES v.* (1870), 18 W. R. 701.—IR.

**384 i. Bill made on Sunday.**—A suspension of a charge on a bill of exchange, on the ground of its being dated on a Sunday, repelled.—*ELLIOT &*

16 Sc. Jur. 229; 6 Duml. (Cl. of Sess.) 411.—SCOT.

**384 ii. Note made on Sunday.**—A note made on Sunday in payment of goods sold on that day is void as between the original parties, but not as against an indorsee for value, & without

U. C. R. 681.—CAN.

**384 iii. S. P. CROMBIE v. ZEB** (1853), 11 U. C. R.

**a. Bill undated—How date may be proved.**—A date is not a material part of a bill of exchange, & may be proved by parol evidence.—*R. v. CUNNETT* (1868), 5 W. W. & A'B. 28.—AUS.



## 52 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—In General. Sect. 2: Sub-sects. 1 & 2,*

certain other bill of exchange, payable 2 months after date, without mentioning any express date in either count:—*Held*: both counts were good.—*HAGUE v. FRENCH* (1802), 3 Bos. & P. 173; 127 E. R. 95, Ex. Ch.

*Annotations*:—*Reid*, *Giles v. Bourne* (1817), 6 M. & S. 73. *Mentd.* *Owen v. Waters* (1836), 2 Gale, 208.

**387.** ———.]—Pltf. declared that J. on Feb. 22, 1816, made his bill of exchange, & thereby required deft., 4 months after date, to pay at V. & Co., Lombard Street, etc. On demurrer, assigning for cause that the bill was payable 4 months after date, but no date was assigned to the bill, & that the non-payment by V. & Co., as well as by deft., was not negatived:—*Held*: the declaration was well, for it should be intended that it was dated on the day when it was made, & the bill did not purport that V. & Co. would pay.—*GILES v. BOURNE* (1817), 6 M. & S. 73; 2 Chit. 300; 105 E. R. 1170.

—— **Right to fill in date.**]—See Part VII., Sect. 1,

### SECT. 2.—POST-DATING.

See 1882 Act, s. 13 (2).

SUB-SECT. 1.—NEGOTIABLE INSTRUMENTS OTHER THAN (

**388. Effect of.**]—The indorsee of a bill of exchange, made payable 65 days after date, which was issued by the drawer, & indorsed by the payee, who died before the day when it bore date, may make title through such indorsement to recover on the bill against the drawer.

What deception does the post-dating hold out? Whoever takes the bill before the day when it bears date must see that it is only payable at 65 days after that date. A bill without any date would still be a good bill; then why is not this as good? (LORD ELLENBOROUGH, C.J.).—*PASMORE v. NORTH* (1811), 18 East, 517; 104 E. R. 471.

*Annotation*:—*Expld.* *Williams v. Jarrett* (1833), 5 B. & Ad. 32.

### SUB-SECT. 2—

#### A. Validity.

**389. Before Stamp Act, 1870 (c. 97).**]—An stamped banker's cheque post-dated:—*Held*: void.—*WHITWELL v. BENNETT* (1803), 3 Bos. & P. 559; 127 E. R. 302.

*Annotation*:—*Expld.* *Austin v. Bunyard* (1865), 6 B. & S. 687.

**390.** ———.]—A post-dated cheque is altogether void, & cannot be received in evidence for any purpose.—*SERLE v. NORTON* (1842), 9 M. & W. 309; 152 E. R. 131; *sub nom.* *SEARLE v. NORTON*, 11 L. J. Ex. 212.

*Mentd.* *Robinson v. Hawkford* (1846), 9 Q. B. 62; *Ramchurn Mullick v. Luchmeschund Radakissen* (1854), 9 Moo. P. C. C. 46; *Laws v. Rand* (1857), 3 C. B. N. S. 442.

**391.** ———.]—*Semble*: a post-dated cheque is receivable in evidence to prove its own invalidity.—*EDE v. KNOWLES* (1843), 2 Y. & C. Ch. Cas. 172; 63 E. R. 76.

**392.** ——— **Order for payment of money—11 Geo. 4 & 1 Will. 4, c. 66.**]—A post-dated cheque:—*Held*: an order for the payment of money within the above Act.—*R. v. TAYLOR* (1843), 1 Car. & Kir. 213. *Annotation*:—*Reid*, *R. v. Hewitt* (1848), 13 J. P. 23.

**393.** ———.]—Where a suit was instituted for the delivery up of a cheque given as part of the consideration for a purchase, which was alleged to have been rescinded, & it appeared that the cheque was post-dated & not stamped, the ct., on that ground, refused to interfere.—*CARRINGTON v. PELI* (1848), 3 De G. & Sm. 512; 64 E. R. 584. *Annotation*:—*Mentd.* *Richmond's Exors. Case* (1849), 3 De G. & Sm. 96.

**394.** ——— **Payment without knowledge of false date.**]—A post-dated cheque on a bank is not absolutely void; if paid without knowledge of the false date, the payment is good.—*WATSON v. POULSON* (1851), 15 Jur. 1111; 18 L. T. O. S. 126.

**395.** ———.]—*Semble*: a cheque given on Dec. 30, but dated Dec. 31, is admissible, if stamped with a shilling stamp as a bill payable a day after date.—*KEY v. MATHIAS* (1862), 3 F. & F. 279, N. P. *Annotations*:—*Reid*, *Whistler v. Forster* (1863), 14 C. B. N. S. 248; *Austin v. Bunyard* (1864), 4 F. & F. 253; *Bull v.* (1871), L. R. 6 Q. B. 209.

**396.** ——— **Draft payable to order.**]—A draft payable to order is not rendered void by being post-dated.—*WHISTLER v. FORSTER* (1863), 14 C. B. N. S. 248; 2 New Rep. 73; 32 L. J. C. P. 161; 8 L. T. 317; 11 W. R. 648; 143 E. R. 441.

*Annotations*:—*Consd.* *Bull v. O'Sullivan* (1871), L. R. 6 Q. B. 209. *Reid*, *Currie v. Misa* (1875), L. R. 10 Exch. 153. *Mentd.* *Austin v. Bunyard* (1865), 6 B. & S. 687; *Gatty v. Fry* (1877), 2 Ex. D. 265.

**397.** ——— **Cheque to A. or bearer.**]—A cheque on a bank for the payment of money to A. or bearer, & bearing 1d. stamp, was given by deft. to A., who observed to deft. that it was post-dated. It came into the hands of pltf. by indorsement, who took it without notice or knowledge that when issued it was post-dated:—*Held*: he was entitled to recover on it against deft.—*AUSTIN v. BUNYARD* (1865), 6 B. & S. 687; 6 New Rep. 202; 34 L. J. Q. B. 217; 12 L. T. 452; 29 J. P. 629; 11 Jur. N. S. 874; 13 W. R. 773; 122 E. R. 1348.

*Annotation*:—*Reid*, *Gatty v. Fry* (1877), 2 Ex. D. 265.

**398.** ——— **Regarded as bill.**]—A post-dated cheque, put into circulation with the express intention of its being held over till a subsequent day, is for all practical purposes a bill of exchange.—*FORSTER v. MACKRETH* (1867), L. R. 2 Exch. 163; 36 L. J. Ex. 94; 16 L. T. 23; 15 W. R. 747. *Annotations*:—*Reid*, *Hutley v. Peacock* (1913), 30 T. L. R. 42. *Mentd.* *Bull v. O'Sullivan* (1871), L. R. 6 Q. B. 209.

**399.** ——— **Cheque payable to order.**]—A post-dated cheque payable to order is not illegal.—*EMANUEL v. ROBERTS* (1868), 9 B. & S. 121; 17 L. T. 646, D. C.

*Annotations*:—*Reid*, *Bull v. O'Sullivan* (1871), L. R. 6 Q. B.

intituled generally as of Michaelmas term, 1847, & filed on Nov. 16 in that ear, stated a bill as made on Oct. 18, 847, & as payable "41 days after the

elapsed: " a  
that the  
commenced before the bill  
was overruled, on the ground

period has now  
for  
to

that the bill may have been  
a day prior to that upon which it was  
TOTTENHAM (1848), 10 L. L. R. 245.  
—IR.

## PART IV.—DATE OF INSTRUMENT.

*J. Fry* (1877), 46 L. J. Q. B. 605 ;  
*Scotland v. Tottenham* (1894), 71 L. T. 168.

**400.** ———.]—There is nothing in any of the statutes to invalidate a post-dated cheque on a banker payable to order on demand.—*BULL v. O'SULLIVAN* (1871), L. R. 6 Q. B. 209 ; 40 L. J. Q. B. 141 ; 24 L. T. 130.

*Annotations* :—*Mentd.* *Gattie v. Fry* (1877), 41 J. P. 184 ; *Royal Bank of Scotland v. Tottenham* (1894), 71 L. T. 168.

**401.** Since Stamp Act, 1870 (c. 97).]—A stamped cheque payable to bearer, but post-dated, is admissible in evidence in an action brought, after the date of the cheque, by the holder, although he took with knowledge of the post-dating, since, under the above Act, the test of admissibility is whether the instrument appears, when tendered in evidence, to be sufficiently stamped.—*GATTY v. FRY* (1877), 2 Ex. D. 265 ; 46 L. J. Q. B. 605 ; 36 L. T. 182 ; 41 J. P. 184 ; 25 W. R. 305.

—*Distd.* *Clarke v. Roche* (1877), 3 Q. B. D. 170. *Folld.* *Hitchcock v. Edwards* (1889), 60 L. T. 636.  
*1. Royal Bank of Scotland v. Tottenham*, [1894] 2 Q. B. 715.

**402.** ——— Regarded as bill or note.]—A post-dated cheque is in law regarded as a bill of exchange or promissory note.—*Re PALMER, Ex p. RICHDALE* (1882), 19 Ch. D. 409 ; 51 L. J. Ch. 462 ; 46 L. T. 116 ; 30 W. R. 262, C. A.

*Annotations* :—*Mentd.* *Royal Bank of Scotland v. Tottenham*, [1894] 2 Q. B. 715 ; *Bence v. Shearman*, [1898] 2 Ch. 582 ; *Gordon v. London City & Midland Bank*, *Gordon v. Capital & Counties Bank*, [1902] 1 K. B. 242.

**403.** ———.]—A post-dated cheque bearing a penny stamp is a valid & negotiable instrument.—*HITCHCOCK v. EDWARDS* (1889), 60 L. T. 636.

*Annotation* :—*Mentd.* *Royal Bank of Scotland v. Tottenham*, [1894] 2 Q. B. 715.

**404.** ———.]—A cheque is not invalid because it is post-dated.—*CARPENTER v. STREET* (1890), 6 T. L. R. 410.

*Annotation* :—*Reid.* *Royal Bank of Scotland v. Tottenham* (1894), 64 L. J. Q. B. 99.

**405.** ——— Test of admissibility in evidence.]—A post-dated cheque stamped as a cheque is admissible in evidence in an action brought, after the date of the cheque, by the holder, since, under Stamp Act, 1891 (c. 39) the test of admissibility is whether the instrument appears, when tendered in evidence, to be sufficiently stamped.—*ROYAL BANK OF SCOTLAND v. TOTTENHAM*, [1894] 2 Q. B. 715 ; 64 L. J. Q. B. 99 ; 71 L. T. 168 ; 43 W. R. 22 ; 10 T. L. R. 569 ; 38 Sol. Jo. 615 ; 9 R. 569, C. A.

*Annotations* :—*Reid.* *Robinson v. Benkel* (1913), 29 T. L. R. 475. *Mentd.* *Gordon v. London City & Midland Bank*, *Gordon v. Capital & Counties Bank*, [1902] 1 K. B. 242.

**406.** ——— Payable on demand—On arrival of due date.]—To an action by pltf. to recover the amount of two cheques drawn to self or order & indorsed by deft., deft. pleaded that as the cheques were post-dated they were not payable on demand & ought to have been stamped as bills of exchange :—*Held* : the two post-dated cheques became cheques payable on demand when the due date arrived, & were sufficiently stamped as cheques.—*ROBINSON v. BENKEL* (1913), 29 T. L. R. 475.

**407.** How & when to be objected to.]—In an action on a cheque, the objection that it was post-dated & not properly stamped ought not to be specially pleaded.—*FIELD v. WOODS* (1837), 7

El.

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B.

*Barnes v. Hodson* (1838), 1  
*Parry v. Nicholson* (1845), 1  
*son v. Vernon* (1860), 7 C. B. N. S. 231.  
*Sheadman v. Duhamel* (1845), 1 C. B. 888 ; *May-  
 nard v. Consolidated Kent Collieries Corp.*, [1903] 2 K. B.  
 121.

**408.** ———.]—An objection that a cheque was post-dated arises on the issue denying the making, being an objection to the admissibility of the instrument in evidence, & it is for the judge to try & determine, as a collateral issue, whether it was post-dated or not.—*DUNSFORD v. CURLEWIS* (1859), 1 F. & F. 702, N. P.

*Annotations* :—*Expld.* *Austin v. Bunyard* (1865), 6 B. & S. 687. *Reid.* *Whistler v. Forster* (1863), 14 C. B. N. S. 248 ; *Austin v. Bunyard* (1864), 4 F. & F. 253.

**409.** ———.]—Cheques being tendered in evidence for pltf. deft. was allowed to prove them post-dated.—*OLIVER v. MORTIMER* (1860), 2 F. & F. 127, N. P.

*Annotations* :—*Expld.* *Whistler v. Forster* (1863), 14 C. B. N. S. 248. *Folld.* *Austin v. Bunyard* (1864), 4 F. & F. 253.

### B. Stamp Duties.

*See, generally, Part XXV., post.*

**410.** Sufficiency of stamp.]—*KEY v. MATHIAS*, No. 395, *ante*.

**411.** ——— Cheque payable to order on demand.]—A cheque drawn payable to A. or order, on demand, is a bill of exchange liable only to the stamp-duty of 1d., & the fact of such instrument being post-dated does not render it invalid.—*WHISTLER v. FORSTER* (1863), 14 C. B. N. S. 248 ; 2 New Rep. 73 ; 32 L. J. C. P. 161 ; 8 L. T. 317 ; 11 W. R. 648 ; 143 E. R. 141.

*Annotations* :—*Folld.* *Austin v. Bunyard* (1865), 6 B. 687 ; *Bull v. O'Sullivan* (1871), L. R. 6 Q. B. 209. *Gatty v. Fry* (1877), 2 Ex. D. 265. *Mentd.* *Currie v.* (1875), L. R. 10 Exch. 153.

**412.** ———.]—A post-dated cheque payable to order is available in the hands of a person who took it with knowledge that it was post-dated, & is admissible in evidence with only a penny stamp.—*BULL v. O'SULLIVAN* (1871), L. R. 6 Q. B. 209 ; 40 L. J. Q. B. 141 ; 24 L. T. 130.

*Annotations* :—*Reid.* *Gattie v. Fry* (1877), 41 J. P. 184 ; *Royal Bank of Scotland v. Tottenham* (1894), 71 L. T. 168.

**413.** ——— Cheque drawn to self or order.]—*ROBINSON v. BENKEL*, No. 406, *ante*.

**414.** Effect of insufficiency of stamp.]—Where a document produced on a trial would, from some defect, be inadmissible if objected to, the practice in general is, that, if such document has been put in & read, the objection cannot afterwards be taken. But where the defect requires extrinsic evidence to show it, as where a cheque has been post-dated, the instrument is to be read, & the ground of objection afterwards proved as part of deft.'s case.—*FIELD v. WOODS* (1837), 7 Ad. & El. 114 ; 6 Dowl. 23 ; 2 Nev. & P. K. B. 117 ; Will. Woll. & Dav. 482 ; 6 L. J. K. B. 209 ; 1 Jur. 496 ; 112 E. R. 414.

*Annotations* :—*Mentd.* *Barnes v. Hodgson* (1838), 2 Jur. 249 ; *Parry v. Nicholson* (1845), 2 Dow. & L. 640 ; *Sheadman v. Duhamel* (1845), 1 C. B. 888 ; *Robinson v. Vernon* 7 C. B. N. S. 231 ; *Maynard v. Consolidated Kent Collieries Corp.*, [1903] 2 K. B. 121.

—*WOOD v.*  
*U. C. R. 419.—CAN.*



**Part V.—Computation of Time of Payment.**

See 1882 Act, ss. 14, 92.

**Time for presentment.]—See Part XII., Sect. 2, 2, post.**

**Within what time payment and satisfaction may**  
—See Part XIV., Sect. 2, sub-sect. 3,

**When cause of action arises.]—See Part XXII., Sect. 3,**

**415. Application of custom of merchants.]—**The ct. recognises the custom of merchants as to the date when a bill falls due.—*PEARSON v. POUNTEYS* (1608), Yelv. 135; 80 E. R. 91.

**416. Bill not stated to be payable at any particular time.]—**In answer to an action on a bill of exchange it was pleaded that the action was premature for the custom was for the acceptor to pay in accordance with his acceptance, & no time was mentioned on the bill, so that it was uncertain whether payment was to be made immediately or after any definite period:—*Held*: the plea was good, but by consent plff. should be allowed to amend.—*EWERS v. BENCHKIN* (1688), 1 Lut. 231; 125 E. R. 121.

**417. —.]—**If a bill is not stated to be payable at any particular time, it is payable immediately (*WIGHTMAN, J.*).—(*GURNEY v. HILL* (1843), 12 L. J. Q. B. 297; 1 L. T. O. S. 113; 7 Jur. 834.

See, generally, Part II., Sect. 1, sub-sect. 3, ante.

**418. Variance in time of payment & date of acceptance.]—**The acceptance of a bill of exchange, dated Sept. 8, 1856, drawn & payable 4 months after date, was thus: "Accepted, payable at O. & Co. London, No. 1,756. Due Dec. 11, 1856." Then followed the signature of the acceptors in a different handwriting:—*Held*: this was not a qualified acceptance, & the bill became due on Jan. 11, 1857, as a 4 months' bill.—*FANSHAWE v. PEET* (1857), 2 H. & N. 1; 20 L. J. Ex. 314; 5 W. R. 489; 157 E. R. 1.

**419. Note payable on demand.]—**With respect to promissory notes payable on demand, Stat. Limitations runs from the date of the note.—*CHRISTIE v. FONSEICK* (1811), 1 Selwyn Law of Nisi Prius, 13th ed. p. 301.

—*Mentd. Re George, Francis v. Bruce* (1890), 44 Ch. D. 627.

**420. —.]—**A note payable on demand is due on the date.—*MALBY v. MURRELLS* (1860), 5 H. & N. 813; 20 L. J. Ex. 377; 2 L. T. 362; 157 E. R. 1405.

**421. — With interest.]—**A note payable on demand, with interest until paid, is not to be

considered as payable instantly.—*GASCOYNE v. SMITH* (1825), M'Cle. & Yo. 338; 148 E. R. 443.

**422. — —.]—**A promissory note, payable on demand, with lawful interest, is payable immediately.—*NORTON v. ELLAM* (1837), 2 M. & W. 461; Murp. & H. 69; 6 L. J. Ex. 121; 1 Jur. 433; 150 E. R. 839.

*Annotations*.—*Consd. Jackson v. Ogg* (1859), John. 397. *Reid. Re George, Francis v. Bruce* (1890), 44 Ch. D. 627; *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833. *Mentd. Re Bethell, Bethell v. Bethell* (1887), 34 Ch. D. 561; *Re Brown's Estate, Brown v. Brown*, [1893] 2 Ch. 300.

**423. — —.]—**A promissory note payable on demand is a present debt & is payable without any demand, & a stipulation for compensation in the shape of interest makes no difference.—*JACKSON v. OGG* (1859), John. 397; 34 L. T. O. S. 6; 5 Jur. N. S. 976; 7 W. R. 730; 70 E. R. 476.

*Annotation*.—*Mentd. Re George, Francis v. Bruce* (1890), 44 Ch. D. 627.

**424. — —.]—**A promissory note payable "on demand" with interest from the date thereof is a present debt, & "at maturity" as soon as given.—*Re GEORGE, FRANCIS v. BRUCE* (1890), 44 Ch. D. 627; 59 L. J. Ch. 709; 63 L. T. 49; 38 W. R. 617; 6 T. L. R. 309.

*Annotation*.—*Reid. Edwards v. Walters*, [1896] 2 Ch. 157.

**425. Note payable two months after sight—Distinction between date & sight.]—**A promissory note, payable 2 months after sight, requires a stamp appropriated to a note payable more than 60 days after sight, or 2 months after date, date & sight not being in this case synonymous.

This is a note payable more than 2 months after date: for the 2 months after sight do not begin to run from the day of the date, but from the day of the note being presented for sight (*per CUR.*).—*STURDY v. HENDERSON* (1821), 4 B. & Ald. 592; 106 E. R. 1053.

**426. Note payable after demand—Payment of interest evidence of demand.]—**In May, 1857, J. gave to R. a promissory note for payment of £150 3 months after demand, no interest being reserved. J. died in 1869, & R. in 1878. The note was in R.'s possession at his death, & he had indorsed upon it receipts in Nov., 1857, & in Aug., 1858, each for half a year's interest. No other interest had ever been paid. R.'s exor. claimed to prove on the promissory note:—*Held*: the admissions by the payee of the payment of interest were evidence of a demand having been made in 1857 so as to make the £150 immediately payable.—*Re RUTHERFORD, BROWN v. RUTHERFORD* (1880), 14 Ch. D. 687; 49 L. J. Ch. 654; 43 L. T. 105; 28 W. R. 802, C. A.

*Annotation*.—*Reid. Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

**PART V.**

**419 i. Note payable on demand.]—**A promissory note payable on demand is payable instantly, & Stat. Limitations runs from time of delivery.—*DICK v. GOURNEY* (1794), Ridg. L. & S.

**419 . —.]—**A promissory note payable on demand is due from the day of its date, & prescription runs against it

from that date.—*LA ROCQUE v. ANDRES* (1851), 3 L. C. R. 335.—CAN.

**419 iii. —.]—**Where a promissory note is payable on demand, prescription runs from the date of the note, & not from the date of demand of payment.—*BACHAND v. LALUMIERE* (1851), Q. R. 21, S. C. 449.—CAN.

**e. Note payable after demand for pay.]—**For a promissory note

runs only from the day of the date of the note: demand alone for payment is not enough.—*COUSINEAU v. LECOURS* (1888), Q. R. 4 S. C. 249.—CAN.

**f. Note payable "in yearly proportions."]** A note in the form "For value received I promise to pay J. & M., or their order," £102 15s., "to be paid in yearly proportions:—"*Held*: to give two years for payment.—*McQUEEN v. McQUEEN* (1852), 9 U. C. R. 5.—CAN.



## PART V.—COMPUTATION OF TIME OF PAYMENT.

**427. Currency presumed to be that stated on bill.]—**The time for which a bill is drawn is that expressed on its face.—**UPSTONE v. MARCHANT** (1823), 2 B. & C. 10; 3 Dow. & Ry. K. B. 198; 1 L. J. O. S. K. B. 244; 107 E. R. 286.

**Annotations:—***Ridd. Williams v. Jarrett* (1833), 5 B. & Ad. 32; *Bull v. O'Sullivan* (1871), L. R. 6 Q. B. 209.

**How currency calculated—Bill payable after sight—Day of sight included.]—**On a bill of exchange payable a certain number of days after sight, the day of the sight shall be included.—**BELLASIS v. HESTER** (1697), 1 Ld. Raym. 280; 91 E. R. 1084; *sub nom. BELASYSE v. HESTER*, 2 Lut. App. 1589.

**Annotations:—***Ridd. Coleman v. Sayer* (1728), 1 Barn. K. B. 303; *R. v. Adderley* (1780), 2 Doug. K. B. 463. *Mentd. Story v. Atkins* (1796), 2 Ld. Raym. 1437; *Hill v. White & Williams* (1839), 8 Scott, 249; *Young v. Higgon* (1840), 6 M. & W. 49; *Dundalk Western Ry. Co. v. Tapster* (1841), 1 Gal. & Dav. 657.

**429. Day of sight excluded.]—**Where a bill of exchange is payable 6 days after sight, the day of sight is to be taken exclusive.—**COLEMAN v. SAYER** (1728), 1 Barn. K. B. 303; 2 Stra. 829; 91 E. R. 206, N. P.

**430. — From date of acceptance or protest.]—**A bill of exchange payable 60 days after sight becomes due 60 days after acceptance, or after protest for non-acceptance.—**CAMPBELL v. FRENCH** (1795), 6 Term Rep. 200; 101 E. R. 510, Ex. Ch.

**Annotations:—***Mentd. Worsley v. Wood* (1796), 6 Term Rep. 710; *Whitcher v. Hall* (1826), 5 B. & C. 269.

**431. — Payment of interest evidence of sight.]—**Where a promissory note was made payable at a certain time after sight, with interest thereon, & the interest was duly paid for several years, as the bill alleged:—*Held*: the note must be taken to have been acted upon according to its form & tenor, & the presentment for sight must have been duly made before the interest was paid, & the payment became due upon the note at the prescribed date after such presentment.—**WAY v. BASSETT** (1845), 5 Hare, 55; 15 L. J. Ch. 1; 6 L. T. O. S. 118; 10 Jur. 89; 67 E. R. 825.

—*Mentd. Brown v. Gordon* (1862), 16 Beav. 302; *Fordham v. Wallis* (1853), 10 Hare 217; *Re Macdonald, Dick v. Fraser*, [1897] 2 Ch. 181.

**432. Days of grace—Part of law merchant.]—**The days of grace allowed for payment of bills are part of the law merchant & to be judicially noticed (**LORD CAMPBELL**).—**BRANDAO v. BARNETT** (1846), 12 Cl. & Fin. 787; 3 C. B. 519; 8 E. R. 1622, H. L.

**Annotations:—***Ridd. Bank of Australasia v. Breillat* (1847), 6 Moo. P. C. C. 152; *Gibson v. Small* (1853), 4 H. L. Cas. 353; *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337. *Mentd. Ireland v. Armstrong* (1843), 1 L. T. O. S. 12; *Cooper v. Shepherd* (1846), 7 L. T. O. S. 282; *Reynell v. Lewis, Wyld v. Hopkins* (1846), 4 Ry. & Can. Cas. 351; *Smart v. Sanders* (1846), 3 C. B. 380; *Foley v. Hill* (1848), 3 H. L. Cas. 28; *Jones v. Peppercorne* (1858), John. 430; *Book v. Gorrisson* (1860), 3 De G. F. & J. 434; *Hare v. Henty* (1861), 10 C. B. N. S. 65; *Thayer v.*

**433 i. Days of grace—Act of law.]—**A plea alleged that a note was given payable in 12 months from Oct. 28, 1842. Demurrer: that the note was not due, including the three days of grace, until Oct. 31, & therefore the contract was erroneously stated:—*Held*: the plea was sufficient, as the three days of grace were the act of the

*r.*, & not a part of the contract of the parties.—**MCCRACK v. REYNOLDS** (1844), 1 U. C. R. 36.—CAN.

*g.* — On what instruments allowed.—*Bills of* usage in Canada, & in the absence of any legal enactment, all bills of exchange are allowed three days of grace after becoming due.—**KNAFF v. BANK**

(1861), 30 L. J. Ch. 427; *Frith v. Forbes* (1862), 31 W. L. R. 33 L. J. Ch. 51; *Bank* (1866), ... *Brinsmead* (1868), 18 L. T. 523; *R. 6 C. P. 584*; *Crouch v.* 873, L. R.

Bank of Australia

*B. 314*; *Bechuanaland Exploration Co. v. Ing Bank*, [1898] 9 Q. B. 638; *Re London & Globe Finance Corp.*, [1902] 2 Ch. 416; *Biddell v. Horst Co.*, [1911] 1 K. B. 934; *Hop v. Glendinning*, [1911] A. C. 419.

**433. — On what instruments allowed—Foreign bill.]—**In the case of foreign bills of exchange the custom is that three days, which are called the days of grace, are allowed.—**TASSELL v. LEWIS** (1695), 1 Ld. Raym. 743; 91 E. R. 1397, N. P.

**Annotations:—***Consd. Morris v. Richards* (1881), 45 L. T. 210. *Ridd. Brown v. Harraden* (1791), 4 Term Rep. 146. *Mentd. Walwyn v. St. Quinton* (1797), 1 Bos. & P. 146.

three days of grace allowed by the custom of merchants for payment of bills of exchange, are allowable on bills drawn & payable in Scotland.—**FRIGUSSON v. DOUGLAS, HERON & Co.** (1796), 6 Bro. Parl. Cas. 276; 2 E. R. 1078, H. L.

**435. — Promissory note.]—**Tender of the amount of a promissory note dated July 21 & payable 10 days after date, should be made on July 31, Aug. 1 is too late.—**MAY v. COOPER** (1721), Fortes. Rep. 376; 92 E. R. 899.

**Annotation:—***Dbtd. Brown v. Harraden* (1791), 4 Term Rep. 148. *May v. Cooper* cannot be supported; the true answer to it is, that when it was determined, these commercial subjects were not so well investigated, nor so well understood, as they are at this time (**GROSE, J.**).

**436. — Held: three days of grace were not to be allowed in promissory notes.** *v. HOOD* (1752), Bull. N. P. 269, N. P.

*Dbtd. Brown v. Harraden* (1791), 4 Term Rep. 148. It is very probable that **Dentson, J.**, formed his opinion on the case of *May v. Cooper*, but he was by it (**GROSE, J.**).

**437. — It is not settled whether days of grace must be allowed on promissory notes.**—**WARD v. HONEYWOOD** (1779), 1 Doug. K. B. 61; 99 E. R. 43.

**438. — Three days' grace are allowed on promissory notes as well as on bills of exchange.**—**BROWN v. HARRADEN** (1791), 4 Term Rep. 148; 100 E. R. 943.

**Annotations:—***Folld. Oridge v. Sherborne* (1843), 11 M. & W. 374. *Ridd. Howe v. Young* (1820), 2 Bl. 391; *Roberts v. Bethell* 22 L. J. C. P. 69.

**439. — Payable to A. simply.]—**Three days' grace are allowed on a promissory note payable to A., without adding "or to his order, or to bearer."—**SMITH v. KENDALL** (1794), 6 Term Rep. 123; 101 E. R. 469.

**Annotations:—***Consd. Miller v. Biddle* (1865), 11 Jur. N. 989. *Mentd. Pimley v. Westley* (1835), 2 Bing. N. 249.

(1850), 1 L. C. R. 253.—CAN.

*payable on demand.]—*Where a post-dated cheque is payable on demand, no days of grace are allowed.—**WOOD-STEPHENSON** (1858), 16 U. C. —CAN.

## 56 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Part V.—Computation of time of payment.  
Part VI. Sects. 1 & 2.]

### 440. Payable by instalments.]

The maker of a promissory note payable by instalments is entitled to the days of grace upon the falling due of each instalment.—ORIDGE v. SHERHORNE (1843), 11 M. & W. 374; 152 E. R. 849; *sub nom.* ORRIDGE v. SHERHORNE, 12 L. J. Ex. 318; 1 L. T. O. S. 111; 7 Jur. 402.

—*Consd.* Miller v. Biddle (1865), 13 L. T. 334.  
I. Carlon v. Kenedy (1843), 12 M. & W. 139.

441. ——— Action on last day of grace.]—In an action on a bill payable by instalments, it appearing that the action was commenced on the last day of grace, but there being no plea to that effect, nonsuit refused, but leave to move given.—GASKIN v. DAVIS (1860), 2 F. & F. 294.

Promissory notes payable by instalments generally, *see* Part II., Sect. 1, sub-sects. 3, 4, *ante*.

442. ——— Inland bill—Bill payable after sight.]—Days of grace are allowed upon inland bills.

Days of grace are allowed where a bill is payable at certain days after sight, as well as where it is payable at sight.—COLEMAN v. SAYER (1728), 1 Barn. K. B. 303; 94 E. R. 206, N. P.

443. ——— .]—*Qu.*: whether the acceptor of an inland bill payable after sight is bound to pay it on demand at any reasonable time of the third day of grace, or whether he is allowed the whole of that day to pay it in.—LEFTLEY v. MILLS (1791), 4 Term Rep. 170; 100 E. R. 935.

*Annotations*:—*Consd.* Kennedy v. Thomas, [1894] 2 Q. B. 759. *Refd.* Haynes v. Birks (1804), 3 Bos. & P. 599; v. Newnham (1825), 10 Moore, C. P. 249.

Bill payable at sight.]—*Qu.*: whether days of grace are allowed on bills payable at sight.—JANSON v. THOMAS (1784), 3 Doug. K. B. 421; 90 E. R. 728.

445. ——— Bill payable after sight.]—*Qu.*: whether, after sight, three days' grace should

be allowed.—DIXON v. NUTTALL (1834), 1 Cr. M. & R. 307; 4 Tyr. 1013; 3 L. J. Ex. 290; 149 E. R. 1097.

446. When day of maturity is Sunday or holiday.]—When the last day of grace is a Sunday or great holiday as Christmas day, upon which no money is usually paid, the party ought to demand the money on the second day.—TASSELL v. LEWIS (1895), 1 Ld. Raym. 743; 91 E. R. 1397, N. P.

*Annotations*:—*Refd.* Brown v. Harraden (1791), 4 Term Rep. 148; Morris v. Richards (1881), 45 L. T. 210. *Mentd.* v. St. Quintin (1797), 1 Bos. & P. 652.

447. ——— Judicature Act, 1875 (c. 77), Ord. 57, r. 3, inapplicable.]—Pltf. sued on a promissory note at 3 months, dated Mar. 11, 1874, & *prima facie* due on June 14, which was a Sunday. The writ in the action bore date June 14, 1880, which was a Monday:—*Held*: as the mercantile usage in the matter of days of grace had the effect of law, it had the like effect on the custom of bills & notes falling due on a Sunday becoming payable on the previous Saturday, & the above rule did not apply to the case, as it was not intended to extend the time fixed by Stat. Limitations.—MORRIS v. RICHARDS (1881), 45 L. T. 210; 46 J. P. 37, N. P.

—*Consd.* Gelmini v. Moriggia, [1913] 2 K. B. 549.

448. When day of maturity is Saturday—When Statute of Limitations begins to run.]—The time for payment of a promissory note expired on Saturday, Sept. 22, 1906. The writ in an action upon the note against the makers was issued on Monday, Sept. 23, 1912:—*Held*: inasmuch as the cause of action was complete at the commencement of Sept. 23, 1906, that day must be included in calculating the 6 years within which the action could be brought under the stat., & as the 6 years expired on Sunday, Sept. 22, 1912, the writ was issued too late.—GELMINI v. MORIGGIA, [1913] 2 K. B. 549; 82 L. J. K. B. 949; 109 L. T. 77; 29 T. L. R. 486.

, generally, LIMITATION OF ACTIONS.

## Part VI.—Acceptance.

### SECT. 1.—NECESSITY FOR ACCEPTANCE

: 1882 Act, ss. 6 (1), 17, 18, 19, 89 (3)

449. To make instrument bill.]—An instrument drawn by A. upon B., requiring him to pay to the order of C. a certain sum at a certain time "without acceptance," is a bill of exchange.

Actual acceptance is not necessary to make the instrument a bill of exchange (PATTERSON, J.).—R. v. KINNEAR (1838), 2 Mood. & R. 117, N. P.

of

450. To make instrument "complete & regular on face of it."]—A bill of exchange does not require

acceptance, in order to make it "complete & regular on the face of it."—NATIONAL PARK BANK OF NEW YORK v. BERGGREN & Co. (1914), 110 L. T. 907; 30 T. L. R. 387; 19 Com. Cas. 234.

### SECT. 2.—WHO MAY ACCEPT.

451. In general.]—A bill must be accepted by the drawee, or failing him, by some one for the honour of the drawee (LORD ELLENBOROUGH, C.J.).—JACKSON v. HUDSON (1810), 2 Camp. 447, N. P.

—*Apprd.* Gwinnell v. Herbert (1836), 5 436. *Refd.*

1. If  
from  
AF.  
on  
not a  
(1871)  
from  
A note  
month of  
the day of  
Wyrk (1844), 2  
day of

"in  
Oct. 31

m. "Next."]—A promissory note, dated Nov. 1, 1895, & payable "November 21 next," is payable on Nov. 21, 1896, & not on Nov. 21, 1895.—DRAPEAU v. POMINVILLE (1897), Q. R. 11 S. C. 326.—CAN.



754, H. L. *Mentd. Re Bentley, Ex p. Bolton* (1838), 7 L. J. Bcy. 10; *Davis v. Clarke* (1844), 6 Q. B. 16.

**452. —.**—A bill directed to a particular person cannot be accepted by any other person, except for honour.—*DAVIS v. CLARKE* (1843), 1 Car. & Kir. 177, N. P.; *subsequent proceedings* (1844), 6 Q. B. 16.

**453. —.**—As a general rule, no person but the drawee of a bill is bound by the acceptance.—*NICHOLIS v. DIAMOND* (1853), 9 Exch. 154; 23 L. J. Ex. 1; 22 L. T. O. S. 79; 2 W. R. 12; 2 C. L. R. 305; 156 E. R. 66.

*Annotations:—Reffd. Mare v. Charles* (1856), 5 E. & B. 978; *Mathews v. Marsland* (1858), 27 L. J. Ex. 148; *Alexander v. Sizer* (1869), 20 L. T. 38; *Jones v. Jackson* (1870), 22 L. T. 828.

**454. —.**—The only persons who can accept a bill are the drawees. An acceptance is an engagement to pay the amount for which the bill is drawn in money, & can only be given by the person against whom the bill is drawn (*LOPES, L.J.*).—*Re BARNARD, EDWARDS v. BARNARD* (1880), 32 Ch. D. 447; 55 L. J. Ch. 935; 55 L. T. 40; 34 W. R. 782, C. A.

**455. Second acceptor.**—If a bill of exchange be accepted by the drawee, another person who, for the purpose of guaranteeing his credit, likewise accepts the bill in the usual form, is not liable as acceptor, but must be sued upon his collateral undertaking.

—*JACKSON v. HUDSON* (1810), 2 Camp. 447, N. P.  
*Annotations:—Apld. Gwinnell v. Herbert* (1836), 5 Ad. & El. 436. *Apprvd. Davis v. Clarke* (1844), 6 Q. B. 16; *Steele v. M'Kinlay* (1880), 5 App. Cas. 754. *Mentd. Re Bentley, Ex p. Bolton* (1838), 7 L. J. Bcy. 10.

**456. Bill directed in blank—Accepted by person residing at place of payment.**—An instrument was drawn, payable to the drawer or his order at a particular place, without being addressed to any person by name, & was afterwards accepted by the person residing at the place where it was made payable:—*Held*: the acceptor was liable in an action upon such instrument as a bill of exchange.—*GRAY v. MILNER* (1819), 8 Taunt. 739; 3 Moore, C. P. 90; 129 E. R. 571.

*Annotations:—Consd. Davis v. Clarke* (1844), 6 Q. B. 16. *Foll'd. Cowley v. Hamp* (1851), 18 L. T. O. S. 143. *Consd. Peto v. Reynolds* (1854), 9 Exch. 410. *Reffd. National Park Bank of New York v. Berggren* (1914), 110 L. T. 907. *Mentd. R. v. Smith* (1843), 2 Mood. C. C.

**457. —.**—A bill directed in blank may be accepted by anybody, & be a good bill.—*DAVIS v. CLARKE* (1843), 1 Car. & Kir. 177, N. P.; *subsequent proceedings* (1844), 6 Q. B. 16.

*See, generally, Part II., Sect. 2, sub-sect. 2, ante.*

**458. — Accepted by defendant's agent—Subsequent verbal promise to pay by defendant.**—Deft.'s agent at Cameroons in Africa, made & delivered to pltf. an instrument in the form of a foreign bill of exchange, payable at sight. The bill was not addressed to any one, but across it deft.'s agent wrote the word "accepted," & deft.'s name & address. Pltf. presented the bill to deft.,

& requested its payment, when deft. denied that he owed the amount, but admitted the signature to be that of his agent. Pltf. then said: "As you acknowledge the signature, you had better pay the bill." Deft. replied: "I'll pay the bill, but I cannot pay it now; I'll give you a bill at 3 months." Pltf. then said: "There is something suspicious about it; it is almost a forgery; you had better pay it at once." Deft. replied: "I'll pay the bill; I cannot pay it now, but I will give my note or bill for it at 3 months":—*Held*: there was no evidence of an acceptance of the instrument.—*REYNOLDS v. PETO* (1855), 11 Exch. 418; 25 L. T. O. S. 303; 156 E. R. 891, Ex. Ch.

**459. Acceptance by agent.**—Deft., a partner in a firm of C. & Co., agreed with her co-partner that the partnership should be dissolved, that the affairs of the firm should be liquidated by an agent, who should realise the assets & pay the creditors, & that the business should thereafter be carried on by deft. Deft. & the agent opened a joint banking account, & requested the bank to honour drafts signed by either of them. Cheques were drawn on the joint account, signed by the agent in the names of deft. & himself, & bills were drawn on C. & Co., & accepted by the agent in the names of deft. & himself, & honoured. Deft. knew nothing of these cheques & bills. Pltf. sued as indorsee for value of a bill of exchange, drawn on C. & Co., accepted by the agent in the names of himself & deft., & made payable at the bank where the joint account was opened:—*Held*: the agent had no authority to accept the bill in deft.'s name, so as to bind her, & not being a partner in the firm of C. & Co., he had no authority to accept bills drawn on the firm, & deft. was not liable.—*ODELL v. CORMACK BROTHERS* (1887), 10 Q. B. D. 223.

*Annotation:—Mentd. Hammond v. Schofield*, [1891] 1 Q. B. 453.

*See, generally, AGENCY, Vol. I., pp. 311, 312, 643-648.*

**460. Bill addressed—To one person—Accepted by one person in name of three.**—When three persons undertake to accept bills for a particular concern, & the drawer draws bills on account of one of them only, & not for the particular concern & he accepts in the name of the three, such bill cannot be recovered by a *bond fide* holder, who received it from the drawer, against the other two.—*WILLIAMS v. THOMAS* (1806), 6 Esp. 18, N. P.

**461. — To firm—Accepted by one partner in own name.**—If a bill of exchange is drawn upon a firm, & one of the partners accepts it in his own name, such acceptance binds the co-partnership. *MASON v. RUMSEY* (1808), 1 Camp. 384, N. P.

—*Reffd. Jenkins v. Morris* (1847), T. O. S. 151.

*See, now, 1882 Act, s. 17 (2).*

**462. — Accepted by one partner in name of firm.**—To an action on a bill of exchange drawn upon a firm, deft. pleaded that he did not

## PART VI. SECT. 2.

**455i. Second acceptor.**—If a bill has been accepted, though conditionally, by the drawee another person, who thereafter accepts, is not chargeable as an acceptor; to make him liable for money received for payee's use, it shown that he received money

which he ought to have applied by paying the acceptance.—*SPALDING v. C'KAY* (1838), 5 O. S. 656.—CAN.

**461i. Bill addressed—To**  
**cepted by one partner in own**  
Defts. carried on business in partnership, under a firm name. By the articles of partnership all bills, etc., were to be signed in the name of the

firm. One partner & L. were in transactions not known to the firm, in the course thereof L. drew a bill on the firm in favour of pltf. The partner, marked across it "Good"; pltf. discounted it:—*Held*: the firm were not liable the acceptance not being in their name.—*HOVEY v.*  
30 C. P. 230.



## 58 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Who may accept. Sect. 3: Sub-sect. 1.]*

accept, & proved that the bill was accepted by his partner in the name of the firm, & included a private debt due from the partner, as well as a debt due from the firm. Deft. had given the partner no authority to accept in the name of the firm for his private debt:—*Held*: the declaration should be amended by adding a count for the consideration, & a verdict entered for the sum really due from the firm upon terms. *Qu.*: whether the plea was proved.—*ELLSTON v. DEACON* (1866), L. R. 2 C. P. 20.

**463. — To old firm—Accepted by partner of old & new firms in name of new firm.]—**A., R., & O. carried on business as partners, under the firm of A. & Co., from Feb., 1820, to May, 1824, when O. retired, & the other two partners agreed to liquidate all the debts due from the partnership, & they continued the business as partners, under the firm of A. & R. In June, 1824, S. agreed to become a member of such last-mentioned partnership, as from May 18 preceding, but his name was not to be introduced, & the business was still carried on under the names of A. & R. only. In July, 1824, H., being indebted to L., drew a bill of exchange in his favour upon A. & Co., which bill was accepted by R. in the names of A. & R. H., the drawer of the bill, had had dealings with the firm of A., R., & O., but whether that firm was indebted to him when the bill was drawn did not appear, nor did it appear that there had been any dealings between H., the drawer, & A., R., & S. after the entrance of S. into the partnership. The name of S. was never used or made known to any person dealing with the firm:—*Held*: A., R., & S. were liable upon the bill as acceptors.—*LLOYD v. ASHBY* (1831), 2 B. & Ad. 23; 9 L. J. O. S. K. B. 144; 100 E. R. 1052.

*Annotations:—Reid. Whittle v. Crowther* (1831), 1 Cr. & J. 316. *Mentd. Heath v. Sansom* (1831), 9 L. J. O. S. K. B. 246.

, cases in Part IX., Sect. 2, *post*.

**464. — “To the directors of the I. Co.”—Accepted by “R. P., manager, J. R., J. P., R. G., directors.”]**—A bill of exchange was drawn by R. P., addressed “To the directors of the I. Co.,” & accepted in the following form: “Accepted, payable at, etc., R. P. manager, J. R., J. P., R. G., directors.” The payee brought *assumpsit* against three directors of the co., who did not sign the acceptance, J. R. & J. P., who were directors, and signed, and R. P. J. R., J. P., & R. P., suffered judgment to go by default. R. P. was a shareholder & officer of the co. The jury found that R. P. did not sign as acceptor, but only as “manager”:—*Held*: the action could not be maintained against defts. individually, nor against the five defts., who were directors, & R. P. as shareholder, there being no implied authority in the directors to bind the co.

Pltfs. proved a letter by the six directors to the bankers of the co., directing them not to pay “cheques for our co.,” unless signed by two of their body. They proved, also, that the bankers had paid cheques, & also acceptances, signed by two directors:—*Held*: pltfs. could not rely on those circumstances, as evidence of authority in

the directors to bind the co. by their acceptances, it not having been left to the jury, at the trial, whether there was evidence of such authority.—*BULT v. MORRELL* (1840), 12 Ad. & El. 745; 10 L. J. Q. B. 52; 5 J. P. 224; 113 E. R. 996.

*Annotations:—Distd. Bottomley v. Fisher* (1862), 1 H. & C. 211. *Reid. Jenkins v. Morris* (1847), 9 L. T. O. S. 151; *Lindus v. Bradwell* (1848), 17 L. J. C. P. 121; *Owen v. Von Uster* (1850), 16 L. T. O. S. 194.

**465. — To “H.”—Accepted by “C.”]**—H. drew a bill payable to himself or order, addressed to H., & C. wrote across it, “Accepted. C.”:—*Held*: C. could not be sued as acceptor.—*DAVIS v. CLARKE* (1844), 6 Q. B. 16; 13 L. J. Q. B. 305; 3 L. T. O. S. 159; 8 Jur. 688; 115 E. R. 6.

*Annotations:—Reid. Lindus v. Bradwell* (1847), 12 Jur. 231; *Peto v. Reynolds* (1854), 18 Jur. 472. *Mentd. Armfield v. Allport* (1857), 27 L. J. Ex. 42; *National Park Bank of New York v. Berggren* (1914), 110 L. T. 907.

**466. — To “William B.”—Accepted by “Mary B.”]**—A bill of exchange, addressed to deft. by the name of “William B.,” was accepted by his wife, by writing across it, her own name, “Mary B.” There was no evidence of any express authority in the wife so to accept the bill, but, on its being presented to the husband, after it had become due, he said he knew all about it, that the bill was a millinery bill, for which the husband appeared to be liable, & that he would pay it very shortly:—*Held*: he was liable as acceptor.—*LINDUS v. BRADWELL* (1848), 5 C. B. 583; 17 L. J. C. P. 121; 10 L. T. O. S. 393; 12 Jur. 230; 136 E. R. 1007.

Proof of identity of acceptor, see Nos. 477 *et seq.*, *post*.

**467. — To “W. B., chemical works”—Accepted “W. B.”—Signature common to individual & his firm.]—**Action on two bills of exchange, one indorsed by W. B., the other addressed to him as “Mr. W. B., chemical works, R.” & accepted “W. B.” W. B. carried on a chemical business at R. In 1878 he & M. became partners, & thenceforth carried on the same business at the same place, under the same name, “W. B.” The account of W. B. at the bank became the firm account, & no alteration was made either in the name or the mode of keeping that account. It was agreed that M. should be a dormant partner, that W. B. should manage the business, & that neither partner should draw, indorse or accept bills without the written consent of the other. The bills sued on were made after the formation of the partnership, & were negotiated by W. B. without the knowledge or consent of M. in renewal of accommodation transactions entered into prior to the partnership. The proceeds of the two bills were paid into the account at the bank. W. B. drew on the account for goods supplied to the business, but also drew out of his private purposes sums exceeding in amount the proceeds of the bills, & he never treated the accommodation transactions as part of the chemical business, nor did he consider that he was binding the partnership by them. Pltfs., when they discounted the bills, did not know of the existence of M. or of the partnership. The jury found that the signature “W. B.” on each of the bills was intended to denote the firm:—*Held*: (1) the finding of the jury was

secretary of  
firm—Whether seal of  
try.]—Bills, directed to  
of a co., so describing him.

in effect drawn upon the co.; if  
he has authority to bind them, he may the  
accept on their behalf, & it is un-

to put the seal of the co. to  
—*GILBERT v.*  
U. C. R. 384.—CAN.

## PART VI.—ACCEPTANCE.

the weight of evidence; (2) there was nothing to prevent M. from denying his liability upon the bills to which he was no party, & from which he derived no benefit; (3) he was not liable on them, & judgment ought to be entered for him; (4) where a signature to a bill was common to an individual & a firm of which the individual was a member, & when the individual carried on no business separate from the firm, there was a presumption that the bill was given for & was binding on the firm.—*YORKSHIRE BANKING CO. v. BEATSON* (1880), 5 C. P. D. 109; 49 L. J. Q. B. 380; 42 L. T. 455; 28 W. R. 879, C. A.

See, further, Part IX., post.

### SECT. 3.—REQUISITES OF VALID ACCEPTANCE.

#### SUB-SECT. 1.—MUST BE WRITTEN ON BILL.

See 1882 Act, s. 17 (2) (a). Formerly verbal acceptances & acceptances not written on the bill were valid.

**468. Signature across back of bill—Whether as acceptor or indorser.]—**A. procured from B. an advance of £1,000 on a bill of exchange at 12 months for C. & D., his two sons. B. signed the bill as drawer, & addressing it to C. & D., handed it to A., who forwarded it to C. & D. They signed it as acceptors, & sent it back to A., who wrote his own name across the back, & gave it to B. He then forwarded the amount to C. & D. Subsequently C. & D. became bkpt., & were unable to pay the amount of the bill. A. & B. being both dead, there was no exact evidence why A. put his name on the bill. C. & D. had previous to the date of the bill obtained money from B. on their own security. The trustees of B. claimed from A.'s representative the amount of the bill on the ground that A. indorsed the bill as "joint obligant" with C. & D., "& as co-acceptor with them for payment of its contents":—*Held*: A. was not an acceptor in any true & proper sense of the word, & his liability, as insisted upon by B.'s trustees, could only be established by proof of a special contract to be answerable to the drawer for the acceptors, which contract, being different from that which the law merchant would infer from his mere signature as it appeared on the back of the bill, could only be proved by a writing properly signed under Stat. Frauds, which writing was absent.—*STEELE v. MCKINLAY* (1880), 5 App. Cas. 754; 43 L. T. 358; 29 W. R. 17, H. L. *Annotations*:—*Dist. Holmes v. Durkee* (1883), Cab. & El. 23. *Consid. Re Barnard, Edwards v. Barnard* (1886), 32 Ch. D. 447. In *Steele v. McKinlay* a person who was not a party to a bill indorsed it, & it was held that such a person may make himself liable by indorsing it; but that

is very different from the acceptance of a bill (*COTTON, L.J. Apprvd. Jenkins v. Coomber*, [1898] 2 Q. B. 168. *Shaw v. Holland*, [1913] 2 K. B. 15. The principle down in *Steele v. McKinlay* are not affected by Act (VAUGHAN WILLIAMS, L.J.). *Reid. Macdonald Whitfield* (1883), 8 App. Cas. 733; *Harburg Indiarub Comb Co. & Winter v. Martin* (1909), 71 L. J. K. B. 8. *Mentd. Wilkinson v. Unwin* (1881), 7 Q. B. D. 636; *Leeds & County Bank v. Walker* (1883), 11 Q. B. D. 84; *Glenie v. Bruce Smith*, [1907] 2 K. B. 507.

See, also, Part XIII., Sect. 6, post.

**469. Drawing cross bill—On request by drawee to accept his draft for like amount.]—**Upon a request to A. to accept a bill, & draw upon B. for the like sum, the mere act of drawing upon B. does not amount to an acceptance.—*SMITH v. NISSEN* (1786), 1 Term Rep. 269; 99 E. R. 1088.

**470. Retention by drawee of bill sent for acceptance—Contrary to usual course of dealing.]—**If a bill of exchange is sent for acceptance to the drawee, & he retains it in his possession, contrary to the usual mode of dealing between himself & the holder, this amounts to an acceptance.—*HARVEY v. MARTIN* (1807), 1 Camp. 425, n. *Annotation*:—*Reid. Jeune v. Ward* (1818), 1 B. & Ald. 653.

**471. For unreasonable time.]—**The vendor of goods had been in the habit of drawing bills in payment upon the vendee, & discounting same with bankers, by whom the bills were transmitted by post for acceptance; & the vendee cautioned the bankers to inquire, when they discounted any such bills, whether the goods for which such bills were respectively drawn had been delivered, & the carrier's receipt sent, & assured them that in that case they would be accepted. The bankers afterwards discounted a bill, & transmitted same for acceptance to the vendee, who detained it in his possession for ten days, & then informed the bankers that he could not accept the bill, as the invoice of the goods had not been delivered, & after a further interval of sixteen days, the bankers having made no objection to his detaining the bill, returned same, the vendor having then stopped payment, without delivering the goods or sending the carrier's receipt:—*Held*: the drawee of the bill was not liable as acceptor. *Qu.*: whether in any case the mere detention of a bill, for an unreasonable time, by the drawee, with whom it is left for acceptance, in point of law amounts to an acceptance.—*MASON v. BARRE* (1818), 2 B. & Ald. 26; 106 E. R. 277.

**472. — For considerable time—Bill destroyed by drawee.]—**Where a bill of exchange being presented & left for acceptance, was refused acceptance by deft., but remained afterwards for a considerable space of time in his hands, & was ultimately destroyed by him:—*Held*: deft. was not thereby liable as acceptor of the bill.—*JEUNE v. WARD* (1818), 1 B. & Ald. 653; 106 E. R. 240.

#### PART VI. SECT. 3, SUB-SECT. 1

*a. In general.]—*E. drew a bill of on deft. payable to pltf.:—*Held*: In the absence of written acceptance, deft. was not liable.—*HALL v. PRITTE* (1890), 17 A. R. 306.—CAN.

*b. —.]—*A bill of exchange not accepted in writing is of no effect.—*BROOKLEH v. SECURITY NATIONAL INSURANCE CO.* (1915), 31 W. L. R. 469; 8 W. W. R. 861.—CAN.

*A acceptance of an inland bill of exchange a requisite.—**MOORE v. BRAKE* Nfld. L. R. 231.—NFLD.

*A contractor drew an order on the chairman of the Board of Works; the order was verbally accepted:—Held*: the order being an inland bill, & the acceptance being verbal, it was not binding on the chairman.—*Re O'GRADY'S INSOLVENCY* (1865), 5 Nfld. L. R. 116.—NFLD.

*c. Verbal acceptance.]—*A bill was presented to the drawee for acceptance, which was refused: creditors of the drawers used arrestments on the goods in respect of which the bill was drawn and fundandum executionem & after obtaining decree used arrestments in the drawee's hands. In a multiple-pounding, the holders of the bill averred

that, prior to the arrestments, the drawee had verbally expressed his willingness to accept:—*Held*: this averment was inadmissible in competition with the arrestment used.—*MACLEAN & STEWART v. WARRIE BROTHERS* (1833), 29 Fac. Coll. 425. SCOT.

*d. Letter promising to pay Not an acceptance.]—*The drawee in a letter to the drawer, after referring to the protest of a bill for non-acceptance, said that it would be paid "at maturity":—*Held*: not an acceptance.—*WILSON v. DIBBS* (1886), 7 N. S. W. L. R. 310.—AUS.



**Sect. 3.—Requisites of valid acceptance: Sub-sects. 1, 2, 3**

**473. Marking of cheques—Presented late—Equivalent to acceptance payable next day.]—**By the practice of the London bankers, if a banker who held a cheque drawn on another banker presented it after four o'clock, it was not then paid but a mark put on it to show that the drawer had assets & that it would be paid, & cheques so marked had a priority & were exchanged or paid next day at noon at the clearing house:—*Held*: such marking under this practice amounted to an acceptance payable next day at the clearing house.—*ROBSON v. BENNETT* (1810), 2 Taunt. 388; 127 E. R. 1128.

*Annotations:—Mentd.* Boddington v. Schlenker (1833), 1 Nev. & M. K. B. 540; Moule v. Browne (1838), 1 Arn. 79.

**474. Authority given to foreign agent to draw.]—**Where a firm in England sent out an agent to America, with authority to draw bills on the firm, & sell & discount them, which he did, but the firm became bkpt. before the bills arrived in England:—*Held*: no proof could be made by an indorsee of the bills, as the authority to the agent did not amount to an implied acceptance.—*Re BENTLEY, Ex p. BOLTON* (1838), 2 Deac. 537; 3 Mont. & A. 307; 7 L. J. Bey. 10; 1 Jur. 819, Ct. of R.

**SUB-SECT. 2.—MUST BE SIGNED BY DRAWEE.**

1882 Act, ss. 17 (2) (a),

**475. Must be signed—Unsigned acceptance on face of bill.]—***Held*: an unsigned acceptance, written on the face of a bill of exchange, was not made invalid by 1 & 2 Geo. 4, c. 78, s. 2, but it was a question for the jury whether it was intended to operate in its then form, or to be subsequently completed by signature.—*DUFAUR v. OXENDEN* (1831), 1 Mood. & R. 90, N. P.

*Annotation:—Reid.* Hindhaugh v. Blakey (1878), 3 C. P. D. 136.

**476. ——— Signature only—Without additional words—Mercantile Law Amendment Act, 1856 (c. 97), s. 6.]—**A bill of exchange:—*Held*: not sufficiently accepted to satisfy the above sect. where the person on whom it was drawn merely wrote his name across the face of it, & there were no words amounting to a statement that the bill was accepted.—*HINDHAUGH v. BLAKEY* (1878), 3 C. P. D. 136; 17 L. J. Q. B. 315; 38 L. T. 221; 26 W. R. 180, D. C.

—*Dtd.* Steele v. McKinlay (1880), 5 App. Cas.

, now, 1882 Act, s. 17 (2) (a).

**477. Proof of "identity of acceptor"—Necessity of proof.]—**[Upon a plea denying deft.'s acceptance to the bill of exchange on which the action is brought, & issue thereon, it is incumbent on pltf. to give some evidence of the identity of deft. with the acceptor. It is not sufficient to prove the of the bill, by a person calling himself

by deft.'s name, but otherwise unknown to the witness.—*BELL v. GUNN* (1841), 11 L. J. C. P. 57.

**478. ——— Bill accepted by Joseph K. in name of "John K. & Co."—***Assumpsit* against John K. on "a bill accepted by Joseph K. in the name of John K. & Co." The acceptance was in the handwriting of Joseph & he had before done business in the name he signed:—*Held*: the verdict must be given against him. *Semble*: if it had been proved, as it was stated, that John was the party who was arrested in the action, pltf. must have been nonsuited.—*WILDE v. KEEP* (1833), 6 C. & P. 235, N. P.

**479. ——— Bill directed to "Charles Banner Crawford"—Accepted "C. B. Crawford."—**To an action by the indorsee against the acceptor of a bill of exchange, deft. pleaded a denial of the acceptance. The bill was directed to "Charles Banner Crawford, East India House," & accepted, "C. B. Crawford." The signature was proved to be the handwriting of a Charles Banner Crawford, who, 5 years before, was a clerk in the East India House:—*Held*: sufficient evidence of the identity of deft., as the acceptor of the bill.—*GREENSHIELDS v. CRAWFORD* (1842), 9 M. & W. 314; 11 L. J. Ex. 372; 6 Jur. 303; 152 E. R. 133.

*Annotations:—Reid.* Sewell v. Evans, Roden v. Ryde (1843), 4 Q. B. 626; Hamber v. Roberts (1849), 7 C. B. 861.

*See, also, Nos. 464 et seq., ante.*

**SUB-SECT. 3.—MUST BE FOR PAYMENT IN MONEY ONLY.**

*See* 1882 Act, s. 17 (2) (b).

**480. Payment "half in money & half in bills."—**A bill was drawn upon deft., who accepted it by indorsement thus: "I do accept the bill to be paid half in money & half in bills":—*Held*: good.—*PETIT v. BENSON* (1697), Comb. 452; 90 E. R. 586.

*Annotations:—Folld.* Smith v. Scarffe (1741), 7 Mod. Rep. 426. *Reid.* Rowe v. Young (1820), 2 Bl. 391; Russell v. Phillips (1850), 14 Jur. 806. *Mentd.* Paine v. Drew (1804), 1 Smith, K. B. 170; Giles v. Grover (1832), 9 Bing. 128; Hamelin v. Bruck & Hirschfeld (1846), 10 Jur. 1094.

**481. Payment by another bill.]—**An acceptance to pay by another bill is no acceptance.—*RUSSELL v. PHILLIPS* (1850), 14 Q. B. 801; 19 L. J. Q. B. 297; 15 L. T. O. S. 4; 14 Jur. 806; 117 E. R. 312.

**SUB-SECT. 4.—MUST BE COMPLETED BY DELIVERY OR COMMUNICATION.**

*See* 1882 Act, s. 21.

**Delivery generally.]—***See* Part VIII., *post*.

**Necessity for delivery to complete indorsement.]—***See* Part XI., Sect. 15, sub-sect. 3, B., *post*.

**482. Delivery by mistake—Intention to cancel—Question for jury.]—**A bill having been presented

**PART VI. SECT. 3, SUB-SECT. 2.**

**a. Must be signed—Initiating by drawer.]—**L. drew a cheque on his bank; their cashier wrote the of his name thereon:—*Held*: the of the cheque could not

OF NEW BRUNSWICK v.

drawer's account.)—Certifying a cheque, by the ledgerkeepers of a bank in the ordinary way, & the charging thereof to the drawer's account, is not an acceptance.—*Re COMMERCIAL BANK OF MANITOBA, Re CLAIMS FOR INTEREST ON DEBTS PROVED* (1894), 10 Man. L. R.

exchange purported to be directed to "J. Q. & Co.," & to have been accepted by that firm. The declaration simply alleged that it had been directed to & accepted by deft., without any further averment:—*Held*: evidence to connect deft. with the acceptance had been properly received.—*TORRETT v. QUIREY* 4 Ir. Jur. 277.—*IR.*

of evidence.]—A bill of



## PART VI.—ACCEPTANCE.

to debt., was left by accident till the day before its maturity, when the messenger called for it. The son of debt., finding an entry in the bill book of its acceptance, took it from the safe & gave it to the messenger. It turned out that debt., though he had accepted the bill, had afterwards put it in the safe while he made inquiries as to the solvency of the drawer, & intended to cancel his acceptance, only he forgot to do so, & the bill was delivered in his absence by his son, who usually did that business in the office:—*Held*: the question for the jury was, whether the acceptance had been a simple one in the first instance, & whether the bill had been put in the safe merely as a place of safety till called for, or whether having been accepted conditionally it had been there placed for safe custody, & without any intention to issue it in any circumstances, & if the former, then it was an acceptance, but if the latter, then not.—*PARKER v. KEMP* (1848), 11 L. T. O. S. 475, N. P.

**483. Whether acceptance complete & irrevocable—Bill returned mutilated with acceptance cut off.]**—A bill was left for acceptance & accepted, but the acceptance was afterwards cut off, & the bill returned in that mutilated state:—*Held*: the acceptance was irrevocable, & the acceptor was still bound.—*TRIMMER v. ODDY* (1800), cited 4 Esp. 271; *sub nom.* *TUMMER v. ODDIE*, cited 6 East 200, N. P.

*Annotations*:—*Apld.* *Thornton v. Dick* (1803), 4 Esp. 270. *Distd.* *Cox v. Troy* (1822), 5 B. & Ald. 474. *Refd.* *Jeune v. Ward* (1818), 1 B. & Ald. 653.

**484. — Where drawee accepts.]**—If the drawee of a bill has put his name on it as acceptor, he cannot afterwards, by erasing his name, discharge his acceptance.—*THORNTON v. DICK* (1803), 4 Esp. 270, N. P.

*Annotation*:—*Refd.* *Cox v. Troy* (1822), 5 B. & Ald. 474.

**485. — After communication to indorsee.]**—A., in consideration of having commissioned B. to receive certain African bills payable to him, drew a bill upon B. for the amount payable to his own order. B. acknowledged by letter the receipt of the list of the African bills, & that A. had drawn for the amount, & assured him that it would meet with due honour from him. The purport of the letter was communicated by A. to third persons, who on the credit of it advanced money on the bill to A., who indorsed it to them:—*Held*: B. was liable as acceptor in an action by such indorser, although after the indorsement A. wrote to B. advising him for certain reasons not to accept.—*CLARKE v. COCK* (1803), 4 East 57; 102 E. R. 751.

*Annotation*:—*Refd.* *Hindhaugh v. Blakey* (1878), 3 C. P. D.

**486. — Bill returned with acceptance obliterated.]**—Deft., having once written his acceptance with the intention of accepting a bill, afterwards changed his mind, & before it was communicated to the holder, or the bill delivered back to him, obliterated his acceptance:—*Held*: he was not bound as acceptor.—*COX v. TROY* (1822), 5

B. & Ald. 474; 1 Dow. & Ry. K. B. 38; 100 E. R. 1264.

*Distd.* *Canepa v. Larios* (1834), 2 R. & C. 65. *Warwick v. Rogers* (1843), 6 Scott, N. R. 1. *Apprvd.* *Chapman v. Cottrell* (1865), 3 H. & C. 865. *Refd.* *Downes v. Richardson* (1822), 5 B. & Ald. 674; *R. v. Birch* (1852), Bail. Ct. Cas. 56; *Xenos v. Wickham* (1803), 14 C. B. N. S. 1; *Bank of Van Diemens Land v. Bank of Victoria* 1), L. R. 3 P. C. 526.

**487. — After notice to drawer.]**—A promise to accept a foreign bill made to a person, by whose direction & on whose account the drawers drew the bill, cannot be cancelled by such person after he has communicated such promise to the drawers.—*GRANT v. HUNT* (1845), 1 C. B. 44; 14 L. J. C. P. 106; 4 L. T. O. S. 313; 9 Jur. 228; 135 E. R. 451.

**488. — Before delivery.]**—The acceptance of a bill though revocable at any time before delivery, is, if unrevoked, complete as soon as written on the bill, & the contract is made in that place where the bill is accepted, not where it is issued.—*R. v. BIRCH* (1852), Bail. Ct. Cas. 56; *sub nom.* *WILDE v. SHERIDAN*, Saund. & M. 22; 21 L. J. Q. B. 260; 19 L. T. O. S. 126; 18 Jur. 426.

*Annotations*:—*Refd.* *Chapman v. Cottrell* (1865), 3 H. & C. 865. *Mentd.* *Trevor v. Wilkinson* (1875), 31 L. T. 731.

**489. Allegation of delivery—Not necessary—Sufficient to state bill made.]**—It is not necessary in a declaration on a bill of exchange, to aver that the maker delivered it; it is sufficient to state that he made it.—*CHURCHILL v. GARDNER* (1798), 7 Term Rep. 596; 101 E. R. 1151.

*Annotations*:—*Refd.* *Roff v. Miller* (1850), 19 L. J. C. P. 278; *Salmon v. Webb & Franklin* (1852), 3 H. L. Cas. 610.

**490. Proof of delivery—Where acceptance admitted.]**—A bill of exchange payable to the order of A. is payable to A., without alleging any order made, & it is sufficient to declare that A. delivered the bill to debt., which he accepted, & by reason of the premises & according to the custom of merchants became liable to pay the contents to A., without alleging a re-delivery of the bill by debt., for if a re-delivery, or something tantamount to show the assent of the drawee to charge himself, be necessary to an acceptance, the demurrer, by admitting the acceptance, impliedly admits the re-delivery, etc.—*SMITH v. McCLURE* (1804), 5 East, 476; 2 Smith, K. B. 43; 102 E. R. 1153.

*Annotation*:—*Refd.* *R. v. Birch* (1852), Bail. Ct. Cas. 56.

*See, further, Part VIII.,*

### SECT. 4.—TIME FOR ACCEPTANCE.

1882 Act, s. 18.

**491. Before bill drawn.]**—It is no objection that the acceptance was written before the bill was drawn.—*MOLLOY v. DELVES* (1831), 7 Bing. 428; 5 Moo. & P. 275; 9 L. J. O. S. C. P. 171; 131 E. R. 165.

*Annotations*:—*Refd.* *Hallfax v. Lyle* (1849), 18 L. J. 197; *Awde v. Dixon* (1851), 6 Exch. 869.

**Blank acceptance.]**—*See Part VII.,*

### PART VI. SECT. 3, SUB-SECT. 4.

**d. Whether acceptance complete & irrevocable—Before notice of acceptance to holder—Before delivery.]**—If a drawee has written his name on a bill with the intention to accept, he is at liberty to cancel the acceptance before the bill

is delivered. *Semble*: before the fact of acceptance is communicated to the holder.—*BANK OF VAN DIEMEN'S LAND v. BANK OF VICTORIA* (1869), 6 W. W. & A'B. 178.—*AUS.*

**485 i. — After communication to drawer or holder.]**—*Semble*: A communication of acceptance to the drawer,

or to a previous holder, binds acceptor as well as a communication to the present holder inasmuch as the acceptance endures for the benefit of them as well as for that of the actual holder.—*PRAODAS THAKURDAS v. DOWLATRAM NANURAM* (1886), 1 L. R. 11 Boin. 257.—*IND.*

## 62 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Sect. 4.—Time for acceptance. Sect. 5:  
sects. 1

SUB-SECT. 1.—IN GENERAL.

**492. After maturity—General acceptance.]—***Assumpsit* on a bill of exchange, dated Mar. 25, 1696, payable within one month after, & accepted by deft. *secundum tenorem et effectum billæ prædictæ* after it was payable:—*Held*: a verdict for plff. was right, as such acceptance amounted to a promise to pay generally.—*JACKSON v. PIGOTT* (1698), 1 Ld. Raym. 364; 1 Salk. 127; Carth. 459; 12 Mod. Rep. 211; 91 E. R. 1140.

*Annotations*:—*Reid*. Lumley v. Palmer (1734), Cunn. 136; Master v. Miller (1791), 4 Term Rep. 320; Wynne v. Ralkes (1804), 2 Smith, K. B. 98; Hartley v. Manton (1843), 8 Jur. 169. *Mentd*. Mutford v. Walcot 1 Ld. Raym. 574.

**493.** —[An acceptance to pay a bill of exchange after the day of payment past, *secundum tenorem billæ*:—*Held*: good.—*MUTFORD v. WALCOT* (1700), 1 Ld. Raym. 574; 91 E. R. 1283; *sub nom.* MITFORD v. WALLICOT, 1 Salk. 129; 12 Mod. Rep. 410; *sub nom.* GREGORY v. WALCUP, 1 Com. 75.

*Annotations*:—*Reid*. Lumley v. Palmer (1734), Cunn. 136; Smith v. Abbot (1741), 2 Stra. 1152; Wynne v. Ralkes (1804), 2 Smith, K. B. 98; Rowe v. Young (1820), 2 Bll. 391.

**494.** —[The drawer of a bill is liable to an indorsee for a bill accepted after the day of payment.—*MOGADARA v. HOLT* (1691), 1 Show. 317; Holt, K. B. 113; 89 E. R. 597; *sub nom.* MEGGADOW v. HOLT, 12 Mod. Rep. 15.

**495. Presumption of acceptance within reasonable time of date—& before maturity.]—**A bill of exchange, in the absence of proof to the contrary, is presumably accepted within a reasonable time after its date, & before its maturity.—*ROBERTS v. BETHELL* (1852), 12 C. B. 778; 22 L. J. C. P. 69; 20 L. T. O. S. 80; 16 Jur. 1087; 1 W. R. 80; 138 E. R. 1111.

*Annotations*:—*Reid*. Mountague v. Perkins (1853), 1 W. R. 437. *Mentd*. Wetton v. Hodd (1854), 23 L. T. O. S. 79.

**496. Proof of—Date written by clerk as evidence.]—**Where a foreign bill is payable at a certain time after sight, & upon the production of the bill, an acceptance appears to have been written by deft. under a date which is not in his handwriting the date is evidence of the time of acceptance because it is the usual course of business in such cases, for a clerk to write the date, & for the party to write his acceptance under the date.—*GLOSSOP v. JACOB* (1815), 1 Stark. 69; 4 Camp. 227, N. P.

### SECT. 5.—QUALIFIED ACCEPTANCES.

1882 Act, ss. 19, 44.

#### PART VI. SECT. 4.

**495 i. Presumption of**  
*within reasonable time of date.]—*1  
hunds had come to the drawee for  
acceptance on Oct. 28 & their non-  
acceptance had not been notified to  
the indorsee on Nov. 3:—*Held*:  
the period during which to  
hold the funds in doubt.—  
*TRAKUNDAS v. DOWLATRAM*

ND. L. L. R. 11 Bom. 257.

#### PART VI. SECT. 5, SUB-SECT. 1.

**497 i. Validity of—Provided sufficient**  
*ork done.]—*Defts. accepted two drafts  
in the following words: "We will  
sums, "from the first  
of & Co., as  
work to earn"

**497. Validity of.]—**There may be a qualification of an acceptance, for he who may refuse the bill totally, may accept it in part.—*PETIT v. BENSON* (1697), Comb. 452; 90 E. R. 586.

*Annotations*:—*Reid*. Smith v. Scarffe (1741), 7 Mod. Rep. 426; Rowe v. Young (1820), 2 Bll. 391; Hamelin v. Bruck & Hirschfeld (1846), 10 Jur. 1094; Russell v. Phillips (1850), 14 Jur. 806. *Mentd*. Paine v. Drew (1804), 1 Smith, K. B. 170; Giles v. Grover (1832), 9 Bing. 128.

**498.** —[A conditional acceptance of a bill of exchange is good.—*JULIAN v. SHOBBROOKE* (1754), 2 Wils. 9; 95 E. R. 658.

*Annotation*:—*Reid*. Rowe v. Young (1820), 2 Bll. 391.

**499. — Partial acceptance.]—**There may be a partial acceptance of a bill of exchange.—*WEGERS-LOFFE v. KEENE* (1710), 1 Stra. 214; 93 E. R. 480.

*Annotations*:—*Reid*. Lumley v. Palmer (1734), Cunn. 136; Rowe v. Young (1820), 2 Bll. 391. *Mentd*. Hamelin v. Bruck & Hirschfeld (1846), 10 Jur. 1094.

**500. — To pay when goods sold.]—**An acceptance "to pay a bill of exchange when certain goods are sold," is a good acceptance, though conditional.—*SMITH v. SCARFFE* (1741), 7 Mod. Rep. 426; 87 E. R. 1334; *sub nom.* SMITH v. ABBOT, 2 Stra. 1152.

*Annotations*:—*Distd*. Russell v. Phillips (1850), 19 L. J. Q. B. 297. *Reid*. Julian v. Shobrooke (1754), 2 Wils. 9; Rowe v. Young (1820), 2 Bll. 391.

**501. — "At particular place."]**—A bill of exchange drawn generally on a party may be accepted in three different forms, either generally, or payable at a particular banker's, or payable at a particular banker's & not elsewhere. If the drawee accepts generally, he undertakes to pay the bill at maturity when presented to him for payment. If he accepts payable at a banker's, he undertakes to pay the bill at maturity when presented for payment either to himself or at the banker's. If he accepts payable at a banker's, & not elsewhere, he contracts to pay the bill at maturity, provided it is presented at the banker's, but not otherwise.—*HALSTEAD v. SKELTON* (1843), 5 Q. B. 86; 1 Dav. & Mer. 664; 13 L. J. Ex. 177; 2 L. T. O. S. 228; 7 Jur. 680; 114 E. R. 1180, Ex. Ch.

*See, also*, Nos. 505, 506, 516 *et seq.*, *post*.

**502. On condition of its being renewed."]**  
A bill of exchange, drawn Nov. 28, 1836, payable 42 months after date, was accepted thus: "Accepted on the condition of its being renewed until Nov. 28, 1844, without interest, payable by me at W. & D., bankers, London":—*Held*: this was a good acceptance, & the bill was properly declared on as accepted payable on Nov. 28, 1844.—*RUSSELL v. PHILLIPS* (1850), 14 Q. B. 391; 19 L. J. Q. B. 297; 15 L. T. O. S. 4; 14 Jur. 806; 117 E. R. 342.

**503. Whether holder bound to be satisfied with.]—**He to whom a bill is due may refuse a

*Held*: a good  
v. SHIELDS (1884), 1 Man. L. t. 278.  
CAN.

**497** — "Will pay on arrival of  
demand is presented for payment, an  
answer "Will pay on arrival of goods  
here" is not an acceptance.—*NASH v.*  
*GEORGE, DOUGHTY, & Co.* (1911), 30  
N. Z. L. R. 1122.—N.Z.



qualified acceptance & protect it, so as to change the first drawer.—*PETIT v. BENSON* (1697), Comb. 452; 90 E. R. 586.

*Annotations*.—*Reid*. *Smith v. Scarffe* (1741), 7 Mod. Rep. 426; *Rowe v. Young* (1820), 2 Bll. 391; *Mentd*. *Paine v. Drew* (1804), 1 Smith, K. B. 170; *Giles v. Grover* (1832), 9 Bing. 128; *Hamelin v. Bruck & Hirschfield* (1846), 10 Jur. 1094; *Russell v. Phillips* (1850), 14 Jur. 806.

504. —.]—The holder may refuse to take a conditional acceptance, & may protect his bill for non-acceptance.—*SMITH v. ABBOT* (1741), 2 Stra. 1152; 93 E. R. 1095; *sub nom.* *SMITH v. SCARFFE*, 7 Mod. Rep. 426.

*Annotations*.—*Mentd*. *Julian v. Shobrooke* (1754), 2 Wils. 9; *Rowe v. Young* (1820), 2 Bll. 391; *Russell v. Phillips* (1850), 19 L. J. Q. B. 297.

505. — Acceptance payable at particular place.]—If a bill be accepted payable at A.'s, who is the acceptor's banker, the holder is not bound to take such special acceptance.—*PARKER v. GORDON* (1806), 7 East, 385; 3 Smith, K. B. 358; 103 E. R. 149.

*Annotations*.—*Reid*. *Gammon v. Schmoll* (1814), 5 Taunt. 344; *Rowe v. Young* (1820), 2 Bll. 391. *Mentd*. *Callaghan v. Aylett* (1810), 2 Camp. 549; *Elford v. Teed* (1813), 1 M. & S. 28; *Garnett v. Woodcock* (1816), 1 Stark. 475; *Triggs v. Newnham* (1825), 10 Moore, C. P. 249.

506. —.]—If a person to whom a bill is directed generally, accepts it payable at a particular place, the holder need not receive such a qualified acceptance, but may resort to the drawer as for non-acceptance. Such an acceptance is equivalent to an acceptance payable at the particular place & no where else, & narrows the general liability of the acceptor to a liability to pay at that place only.—*GAMMON v. SCHMOLL* (1814), 5 Taunt. 344; 1 Marsh. 80; 128 E. R. 722.

*Annotations*.—*Consd*. *Rowe v. Young* (1820), 2 Bll. 391, H. L. *Reid*. *Sebag v. Abitbol* (1816), 4 M. & S. 462.

See, also, No. 501, *ante*; Nos. 516 *et seq.*, *post*.

507. — Acceptance payable in particular currency.]—The holder of a bill of exchange may insist upon the drawee accepting it, generally, in the very words in which it is drawn, or may protest it for non-acceptance.

In an action against the drawer of a bill of exchange drawn on Lisbon "payable in *effective* & not in *vals reais*," it appeared that the drawees had offered to accept the bill payable in *vals denaros*, another sort of currency, which was refused:—*Held*: the drawees ought to have

accepted generally, & as an acceptance to pay in *denaros* was not a sufficient acceptance of a bill drawn payable in *effective*, *pltf.* had a right to refuse the acceptance.—*BOEHM v. GARCIA* (1807), 1 Camp. 425, n.

*Annotation*.—*Reid*. *Rowe v. Young* (1820), 2 Bll. 3

508. Whether condition sufficiently fulfilled—Bill accepted payable in certain events.]—A. in June, 1811, agreed to purchase a house of B. for £1,000, paying £300 down, full possession to be given by June 1, 1812. B. was arrested in June, 1811, on which A. accepted a bill for B. in favour of B.'s creditors, payable if the house should be given up on June 1, 1812. At B.'s request, A. put his nephew into the house to take care of it, while B. remained in custody. B. having a bad title to the house, gave up all claim to it, & A. purchased it of the real owner, being allowed the £300, which he had paid to B.:—*Held*: the possession which A. had of the house from B., was not such a compliance with the condition of the acceptance, as to support an action by the holder of the bill against A.—*SWAN v. COX* (1811), 1 Marsh. 176.

509. Condition indorsed by payee before acceptance—Binds acceptor.]—If the payee of a bill annexes a condition to his indorsement before acceptance, the drawee, who afterwards accepts it, is bound by that condition, & if the condition is not performed, the property in the bill reverts to the payee, & he may recover the contents against the acceptor.—*ROBERTSON v. KENSINGTON* (1811), 4 Taunt. 30; 128 E. R. 238, Ex. Ch.

#### SUB-SECT. 2.—WHAT ACCEPTANCES ARE QU'A

See 1882 Act, s. 19 (2).

510. Question of law—Whether acceptance general or qualified.]—Whether an acceptance is conditional or absolute is a question of law.—*SPROAT v. MATTHEWS* (1786), 1 Term Rep. 182; 99 E. R. 1041.

511. Conditional—"Accepted for L. & G. of Leghorn to pay as remitted from thence at usage."—An acceptance in the following form: "Accepted for L. & G. of Leghorne to pay as remitted from

a. Whether condition sufficiently fulfilled—Payable when amount collected.]—A. accepted a bill in the following terms: "Accepted to pay when I collect a sufficient amount out of P.'s debts to pay same":—*Held*: without proof of money of P.'s having come into his hands A. could not be made liable.—*FULLERTON v. C* (1871), 8 N. S. R. 470.—CAN.

l. — Payable when in funds.]—Deft. accepted an order drawn by H. in favour of *pltf.*, in these words: "Accepted: payable when in funds" received out of *bkpt.*'s estate: it was shown that deft. had received a large sum but had applied it to satisfying his own claims thereon:—*Held*: the evidence did not show such fulfilment of the condition upon which the acceptance was made, as to make deft. liable upon it.—*POTTERS v. TAYLOR* (1887), 20 N. S. R. (8 R. & G.) 362; 7 C. L. T. 434.—CAN.

debentures

—Defta. accepted a bill of exchange drawn by P. payable "when the balance of debentures in our hands are sold by us, & proceeds received, & our claim as at this date & interest to date of payment has been paid." Defta. at that time held debentures of P. as security with power to sell them at a certain figure. They assumed the debentures at that figure; notified P. of the sale & enclosed an account crediting him with the amount:—*Held*: the debentures had been "sold," & the proceeds received within the meaning of the acceptance.—*ONTARIO BANK v. MCARTHUR* 5 Man. L. R. 381.—CAN.

h. — shares "Scrip attached—Not drew a bill of exchange upon W. against one hundred shares in the D. Co., scrip attached. The bill was discounted by S., to whose order it was payable. S. detached the scrip & sent the bill to W. for acceptance; he accepted the bill. In previous

W. had accepted bills knowing that the scrip had been detached, & S. had in this case only followed the usual course of business. W. knew where the scrip was & might have inspected it. On the due date the bill & scrip were tendered to W., who then for the first time discovered that the scrip was not in order, & refused to pay the bill:—*Held*: in the circumstances W. was bound by his acceptance.—*WIARDA v. STANDARD BANK* (1889), 6 S. C. 326.—S. AF.

#### PART VI. SECT. 5, SUB-SECT. 2.

k. Conditional—Proviso for altering due date.]—An acceptance is conditional where it provides that, if cars were not shipped promptly, the bill was to be altered to read "30 days from date of shipment."—*GOLDSTEIN v. GILLIS* (1909), 10 W. L. R. CAN.

l. General—Bill drawn particular place.]—Under the add



## 64 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 5.—Qualified Acceptances: Sub-sect. 2.**  
**Sect. 6.]**

thence at usage":—*Held*: to be not an absolute acceptance, but only conditional.—**BANBURY v. LISSER** (1744), 2 Stra. 1211; 93 E. R. 1134, N. P.

*Annotations*:—**Distd.** Russell v. Phillips (1860), 19 L. J. Q. B. 297. **Reid.** Griffin v. Weatherby (1868), L. R. 3 Q. B. 753.

**512. Payable when in cash for cargo.]**

A conditional acceptance of a bill of exchange is good.

Action upon a bill of exchange brought by the payee against the acceptor, who accepted it upon account of the ship T. when in cash for the vessel's cargo. Pltf. averred in his declaration that at the day when the bill became payable deft. was in cash for the ship's cargo:—*Held*: deft. was liable by such conditional acceptance, there being a difference between such sort of acceptance when the bill was drawn upon the person, & where it was drawn upon goods.—**JULIAN v. SHOBROOKE** (1754), 2 Wils. 9; 95 E. R. 658.

*Annotation*:—**Reid.** Rowe v. Young (1820), 2 Bll. 391.

**513. — Payable on giving up bill of lading.]**—An acceptance in the following form: "Accepted, payable on giving up bill of lading for seventy-six bags of clover-seed, per A., at the L. & W. Bank," is a conditional acceptance as against the acceptor, binding the holder of the bill, upon presenting it for payment, to give up the bill of lading, but not binding him to present on the very day the bill falls due.—**SMITH v. VERTUE** (1860), 9 C. B. N. S. 214; 30 L. J. C. P. 50; 3 L. T. 583; 7 Jur. N. S. 395; 9 W. R. 146; 142 E. R. 81.

*Annotations*:—**Reid.** Ebsworth v. Alliance Marine Inace. (1873), L. R. 8 Q. B. 500; Decroix, Verley v. Moyer (1890), 25 Q. B. D. 343.

**514. — — —.]**—R. & Co., merchants at Madras, consigned goods to H., their agent in London, for sale on their account, & in respect of those goods they drew bills of exchange upon H. The bills were discounted by & indorsed to the Madras branch of a London bank, to whom the bills of lading of the goods were delivered with the bills of exchange. They were sent to London & tendered to H. for acceptance, & he accepted them, "payable on delivery of the bills of lading" the acceptance was a conditional one.

**HOWE, Ex p. BRETT** (1871), 6 Ch. App. 838; 40 L. J. Bey. 51; 25 L. T. 252; 19 W. R. 1101, L. J.

*Annotation*:—**Foll.** Re Baumann, Ex p. Oriental Bank Corpn. (1874), 30 L. T. 803.

**515. Partial—Bill drawn for stated amount—Accepted as to smaller sum.]**—There may be a partial acceptance of a bill of exchange.

Pltf. sued the acceptor of a bill of exchange drawn on deft. for £127 18s. 4d., & which de accepted to pay £100 part thereof:—*Held*: pltf. was entitled to judgment.—**WEGERSLOFFE v. KRENE** (1719), 1 Stra. 214; 93 E. R. 480.

**Reid.** Lumley v. Palmer (1734), Cunn. 136; **Rowe v. Young** (1820), 2 Bll. 391; **Hamelin v. Bruck** (1840), 10 Jur. 1094.

to the acceptor of a bill of  
was written, "payable at No. 47, B.  
Street, Dublin." The declaration  
the

Jo.

m. Partial

partial acceptance, the contract being  
in its nature indivisible; much less can  
any mere promise to pay part at a

on drawer

not

future time in any way satisfy the  
payee's claim, or postpone his right  
to reimbursement of his loss from the

v. DAHIABHAI (1879), L. L. R.  
182.—IND.

**516. Local—Bill drawn payable at particular place—Accepted without limitation.]**—If a bill of exchange be drawn payable at a particular place, & a party accept it, without stating that he accepts it there, & not elsewhere, this must be taken as a general acceptance.—**SELBY v. EDEN** (1826), 3 Bing. 611; 11 Moore, C. P. 511; 4 L. J. O. S. C. P. 108; 130 E. R. 649.

*Annotations*:—**Foll.** Fayle v. Bird (1827), 6 B. & C. 531. **Reid.** Gibb v. Mather (1832), 2 Cr. & J. 254; **Saul v. Jones** (1858), 1 E. & E. 59.

**517. Accepted payable there.]**

A bill of exchange was drawn payable at a particular place & accepted payable there:—*Held*: this was a general acceptance.—**FAYLE v. BIRD** (1827), 6 B. & C. 531; 9 Dow. & Ry. K. B. 639; 5 L. J. O. S. K. B. 217; 108 E. R. 547.

*Annotations*:—**Reid.** Gibb v. Mather (1832), 2 Cr. & J. 254; **Saul v. Jones** (1858), 28 L. J. Q. B. 36.

**518. — Accepted "payable at."]**—*Held*: the words, accompanying an acceptance, "payable at a particular place," or the words "accepted, payable at, etc.," were not words restricting or qualifying the acceptor's liability, but rendering him generally & universally liable.—**SMITH v. DE LA FONTAINE** (1785), Holt, N. P. 366, n.

*Annotations*:—**Overd.** Rowe v. Young (1820), 2 Bll. 391. **Reid.** Fenton v. Goundry (1811), 13 East, 459.

**519. —.]**—If a bill of exchange be "accepted, payable at the house of P. & Co." it is a qualified acceptance restricting the place of payment, & the holder is bound to present the bill at that house for payment in order to charge to acceptor of the bill. If he brings an action upon the bill against the acceptor, he must in his declaration aver, & on the trial prove, that he made such presentment.—**ROWE v. YOUNG** (1820), 2 Bll. 391; 2 Brod. & Bing. 165; 4 E. R. 372, II. L.

*Annotations*:—**Distd.** Rhodes v. Gent (1821), 5 B. & Ald. 244. **Consd.** Skelton v. Halstead (1842), 6 Jur. 916; **Saul v. Jones** (1858), 1 E. & E. 59. **Reid.** Treacher v. Hinton (1821), 4 B. & Ald. 413; **Gibb v. Mather** (1832), 8 Bing. 214; **Re Mayor, Ex p. Whitworth** (1841), 2 Mont. D. & De G. 158; **Smith v. Vertue** (1860), 9 C. B. N. S. 214. **Mentd.** Cowie v. Halsall (1831), 4 B. & Ald. 197; **Smith v. Jersey** (1821), 3 Bll. 290; **Re Dilworth, Ex p. Lancaster Canal Co.** (1831), Mont. 27; **Haldane v. Johnson** (1853), 8 Exch. 689.

*See, now*, 1882 Act, s. 19 (2) (c).

**520. — — —.]**—A bill of exchange, accepted "payable at," etc., is a general acceptance.—**HARTLEY v. SPITTAL** (1828), 7 L. J. O. S. K. B. 83.

**521. — — —.]**—Bills accepted in the following form: "Accepted, payable at the Chartered Mercantile Bank, Kandy":—*Held*: general acceptances.—**Ex p. HAYWARD** (1887), 3 L. R. 687, D. C.

**522. Words of limitation added above acceptance—"Order" struck out.]**—If the acceptor of a bill of exchange desires to qualify his acceptance, he must do so on the face of the bill in clear & unequivocal terms, & so that any person taking the bill could not if he acted reasonably fail to understand that it was accepted subject to an expressed qualification.

A bill of exchange was drawn by F. payable "to order Mr. F." The drawees stamped in

printed letters across the face of the bill the words, "Accepted payable at A. Bank London for" the drawees. Above those words the drawees wrote: "In favour of Mr. F. only. No. 28." The word "order" was struck out, but when or by whom did not appear. In an action on the bill by indorsees for value against acceptors:—*Held*: looking at the position & collocation of the words as they appeared on a facsimile of the bill, the words "in favour of Mr. F. only" did not constitute a qualification of the acceptance, & the acceptance was a general acceptance of a negotiable bill, & the action was maintainable.—*MEYER & Co. v. DE CROIX, VERLEY ET CIE* [1891] A. C. 520; 61 L. J. Q. B. 205; 65 L. T. 653; 40 W. R. 513; *sub nom.* DECROIX VERLEY ET CIE *v.* MEYER & Co., 7 T. L. R. 729, H. L.; *affg.* DECROIX VERLEY ET CIE *v.* MEYER & Co. (1890), 25 Q. B. D. 343, C. A.

*Annotation*:—*Reid. National Bank v. Silke* (1890), 39 W. R. 361.

**523.** ——— " & not elsewhere "—" Only " omitted.]—If a bill of exchange is accepted payable at a particular place, " & not elsewhere," it is a special acceptance. The word "only" is not necessary to make it special.—*HIGGINS v. NICHOLS* (1839), 7 Dowl. 551; *sub nom.* SIGGERS *v.* NI 1 Will. Woll. & H. 582; 3 Jur. 341.

**524.** ——— ———.]—If the drawee of a bill drawn without special direction as to place of payment accepts it, payable at a particular place, without any additional words, he undertakes thereby to pay the bill at maturity, when presented at that place, or to himself; if he accepts, payable at such place, " & not otherwise or elsewhere," he undertakes to pay it at maturity, if presented at that place, but not otherwise; & if a declaration by indorsee against acceptor of such a bill states that he accepted it "payable at C. & Co., bankers," & that deft. promised to pay it "according to the tenor & effect thereof," it will be understood that the bill is pleaded according to its legal effect, but that does not imply that the bill is made payable at the bankers only, & the declaration need not state a presentment there.—*JALSTEAD v. SKELTON* (1813), 5 Q. B. 86; 1 Dav. & Mer. 664; 13 L. J. Ex. 177; 2 L. T. O. S. 228; 7 Jur. 680; 114 E. R. 1180, Ex. Ch.

**525.** Without limitation.]—A., the drawee of a bill, accepted it payable at a particular place, without stating it to be payable there only or not elsewhere:—*Held*: such bill might, in an action against A., be declared upon as made payable at that place, although such an acceptance amounted to a general acceptance.—*BLAKE v. BEAUMONT* (1842), 4 Man. & G. 7; 1 Dowl. N. S. 397; 4 Scott, N. R. 617; 11 L. J. C. P. 222; 134 E. R. 3.

*See, also, Nos. 501, 505, 506, ante.*

**526. Qualified as to time—Drawn payable forty-two months after date—Accepted on condition of renewal to eight years after date.]—**A bill of exchange, drawn Nov. 28, 1836, payable 42 months after date, was accepted in the following form: "Accepted on the condition of its being

renewed until Nov. 28, 1844, without interest, payable by me at W. & D., bankers, London." In an action by indorsee against acceptor:—*Held*: this was a good acceptance, & the bill was properly declared on as accepted payable on Nov. 28, 1844.—*RUSSELL v. PHILLIPS* (1850), 14 Q. B. 891; 19 L. J. Q. B. 297; 15 L. T. O. S. 1; 11 Jur. 806; 117 E. R. 342.

**527.** ——— Drawn payable four months after date—Accepted due in three months.]—The acceptance of a bill of exchange, dated Sept. 8, 1856, drawn & payable 4 months after date, was in the following form: "Accepted, payable at O. & Co., London. No. 1,756. Due Dec. 11, 1856." Then followed the signature of the acceptors in a different handwriting:—*Held*: this was not a qualified acceptance, & the bill became due on Jan. 11, 1857, as a 4 months' bill.—*FANSHAW v. PEET* (1857), 2 H. & N. 1; 26 L. J. Ex. 314; 5 W. R. 489; 157 E. R. 1.

#### SECT. 6.—PROOF OF ACCEPTANCE AND SIGNATURE.

**528. When necessary—To charge drawer—Bill shown to be drawn on non-existing party.]—**In an action by a second indorsee, against the drawer of a bill of exchange, payable to his own order, proof that the bill purported to have been accepted, when it was indorsed to pltf., does not supersede the necessity of proving an actual acceptance. Pltf. in such case must either allege & prove an actual acceptance, or charge the drawer with having drawn the bill upon a non-existing person.—*SMITH v. BELLAMY* (1817), 2 Stark. 223, N. P.

**529.** ——— To charge indorser—Bill dishonoured by non-payment.]—Where, in an action by an indorsee against the indorser of a bill of exchange dishonoured on presentment for payment, the declaration contained an averment that the bill was accepted by the drawee:—*Held*: this was unnecessary, & pltf. need not prove it.—*TANNER v. BEAN* (1825), 4 B. & C. 312; 6 Dowl. & Ry. K. B. 338; 3 L. J. O. S. K. B. 222; 107 E. R. 1075.

*Annotations*:—*Reid. Easton v. Pratchett* (1835), 1 Gale, 250; *Shearin v. Burnard* (1839), 10 Ad. & El. 693.

**530. Admission by acceptor—That bill good bill.]—**If a bill purporting to be accepted by G. be shown to him, & he declares it to be a good bill, that is sufficient proof that he wrote the acceptance.—*R. v. HEVEY, BEATTY & M'CARTY* (1782), 1 Leach, 232.

*Annotation*:—*Mentl. R. v. Cooper* (1875), 1 Q. B. D. 19.

**531.** ——— Obtained under faith of compromise.]—In an action on a bill of exchange against deft. as joint acceptor, it was proved that the cause having been entered, & standing for trial at the former sittings, a treaty had taken place between the parties, for the purpose of settling the action, in consequence of which, the record had been withdrawn, & that at such treaty, deft. having been asked whether that was his

#### PART VI. SECT. 6.

**528 i. When necessary—To charge drawer.]—Qu.**: whether other proof of acceptance is necessary to

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the drawer of a foreign bill than the protest for non-payment. If not necessary in ordinary cases, whether it would be, where the acceptance purported to make the bill payable by

third persons, & protest for non-payment is made upon presentment to such third persons only.—*POLLON v. CUNARD* (1843), 2 Kerr,



**Sect. 6.—Proof of acceptance and signature.**

handwriting subscribed to the note, admitted that it was his. The admission was the only evidence offered by pltf. to prove deft.'s handwriting:—*Held*: although any admission or confession made by the party respecting the subject-matter of the action, obtained while a treaty was depending, under faith of it, & into which the party might have been led by the confidence of a compromise taking place, could not be admitted to be given in evidence to his prejudice, yet the fact of a handwriting being a person's or not, stood on a different foundation, as it was matter in no way connected with the merits of the cause, & was capable of being easily proved by other means, & the above evidence was admissible.—

WALDRIDGE v. KENNISON (1794), 1 Esp. 143, N. P.  
*Annotation*:—*Mentd.* Froyssell v. Lewelyn (1821), 9 Price, 122.

**532. Admission by acceptor's attorney.**—In an action against the acceptor of a bill of exchange, where deft.'s attorney had given notice to pltf. to produce all papers relating to a bill described as the bill in question, & said to be "accepted by deft.":—*Held*: such notice was *prima facie* evidence of deft.'s acceptance.—HOLT v. SQUIRE (1825), Ry. & M. 282, N. P.

**533.** —.]—In an action on a bill of exchange against the acceptor, to which deft. pleaded *non acceptavit*, pltf. gave in evidence the following letter, signed by deft.'s attorney: "I hereby admit that the acceptance to the bill of exchange, upon which this action is brought, is in the handwriting of deft.":—*Held*: this was evidence to go to the jury of deft.'s acceptance, without the production of the bill itself.—CHAPLIN v. LEVY (1854), 9 Exch. 531; 23 L. J. Ex. 117; 22 L. T. O. S. 290; 2 W. R. 241; 2 C. L. R. 556; 156 E. R. 227.

*Annotation*:—*Mentd.* Sharples v. Rickard (1857), 2 H. & N. 67.

**534. By promise of drawer to pay bill—Action against drawer & indorser.**—In an action against the drawer & indorser of a bill of exchange dishonoured for non-payment after being accepted, although it be unnecessary to state the acceptance in the declaration, if it be stated, it must be proved; but a promise by deft. to pay after the bill was due, is a sufficient admission of the acceptance, as well as of the handwriting of deft. himself & of the other parties to the bill.—JONES v. MORGAN (1810), 2 Camp. 474, N. P.

—*Reid.* Patterson v. Becher (1821), 6 Moore, C. P.

**535. By other bills.**—In an action by indorsee against acceptor on a bill of exchange, which deft. contends is a forgery, other bills of deft. may be produced to the jury, if literate, to compare the handwriting.—ALLFARROCK v. ROACH (1791), 1 Esp. 351; Peake, Add. Cas. 27, N. P.

*Ad. & El.* 514. *Reid.* Doe d. Mudd v. Suckermore (1836), 5 Ad. & El. 703.

**536. Bill accepted by mark.**—A bill accepted by mark may be proved from inspection by a

*n. Adoption of forged*  
*Proof of adoption.*—In an action against acceptor the defence was that the acceptance was a forgery but the party whose

the bill:—*Held*: the *onus probandi* is strongly on the person alleging adoption.—POWRIE v. LOUIS (1831), 18 Sc. L. R. 533.—SCOT.

**536 i. Bill accepted by mark.**—accepted by an old woman, her

person who has seen the party so execute instruments.—GEORGE v. SURREY (1830), Mood. & M. 516, N. P.

**537. By bank clerk.**—In an action against the acceptor of a bill of exchange, the only proof of the handwriting of deft. was that of a banker's clerk, who stated that, 2 years before he saw a person calling himself by deft.'s name sign a book, that he had never seen him since, but that he thought the handwriting was the same, & had since seen cheques bearing the same signature:—*Held*: this was evidence to go to the jury.—WARREN v. ANDERSON (1839), 8 Scott, 384.

**538.** —.]—In an action against H. T. R. as acceptor of a bill of exchange, it appeared that a H. T. R. had kept cash at the bank where the bill was made payable, & had drawn cheques which the cashier had paid. The cashier knew the party's handwriting, by the cheques, & swore that the acceptance was in the same writing, but he had not paid any cheque for some time, did not know the party personally, & could not further identify him with deft.:—*Held*: a sufficient *prima facie* case.—RODEN v. RYDE (1813), 4 Q. B. 626; 3 Gal. & Dav. 604; 12 L. J. Q. B. 276; 1 L. T. O. S. 145; 7 Jur. 554; 114 E. R. 1034.

*Annotations*:—*Reid.* Hamber v. Roberts (1849), 7 C. B. 861. *Mentd.* Martin v. White (1910), 102 L. T. 23.

**539. S. P. SEWELL v. EVANS** (1843), 4 Q. B. 626; 7 Jur. 554; 114 E. R. 1034.

*Annotations*:—*Reid.* Hamber v. Roberts (1849), 7 C. B. 861. *Mentd.* Perren v. Monmouth Ry. Co. (1853), 1 C. L. R. 168; Martin v. White (1910), 102 L. T. 23.

**540. By notice to admit bill.**—In an action on a bill of exchange alleged to have been accepted by defts. under the style & firm of A. & Co., an order was made by consent, to admit the handwriting of the acceptance. The notice to admit was as follows: "Bill of exchange for £121 10s. drawn by pltf., upon & directed to defts. as A. & Co., & accepted by B. for defts. as A. & Co., payable, etc., & indorsed, etc.":—*Held*: such admission precluded defts. from denying the authority of B. to bind the firm of A. & Co., by such acceptance, & was not a mere admission that he signed an acceptance purporting to bind that firm.—WILKES v. HOPKINS (1845), 1 C. B. 737; 3 Dow. & L. 184; 14 L. J. C. P. 225; 5 L. T. O. S. 200; 135 E. R. 732.

**541. That bill accepted payable at particular place—By bank clerk.**—In an action by the acceptor against the drawer of an accommodation bill, on his implied contract of indemnity, pltf., in order to prove that a former bill, in renewal of which the bill in respect of which the action was brought, was given, had been made payable at a particular place, called a banker's clerk, who, without producing the bank book, stated that he had ascertained the fact from an entry therein in his own handwriting, but that, independently of that entry, he had no recollection whatever of the fact:—*Held*: this was not evidence of such fact.—BEECH v. JONES (1848), 5 C. B. 696; 136 E. R. 1052.

being led by another, sustained as a good obligation, on proof, that she was at the time in full possession of her faculties, & she had authorized her hand to be led.—LAMONT v. JOHNSTONS (1866), 3 Sc. L. R. 35.—SCOT.



## SECT. 7.—AGREEMENT TO ACCEPT.

**542. What is—Verbal statement by drawee.]—**

To charge a drawee of a bill of exchange, there must be evidence of a contract to accept. But evidence that the drawee said he would help the holder if he could, for that he had then some effects, which, after the bill had remained in his hands 10 days, he offered the agent of the holder to sell & pay himself, & that the drawee had desired that the bill should be left in order that he might examine into it, is insufficient to prove a contract to accept.—*CLAVEY v. DOLBIN* (1736), *Lee temp. Hard.* 278; 95 E. R. 179.

**543. — That he cannot accept until stores paid for.]—**If the drawee of a bill of exchange says he cannot accept it till stores are paid for, it is an undertaking to accept when the stores are paid for.—*PIERSON v. DUNLOP* (1777), 2 Cowp. 571; 98 E. R. 1246.

*Annotations:—*Expld. *Johnson v. Collings* (1800), 1 East, 98. *Consd. Clarke v. Cock* (1803), 4 East, 57. *Folld. Miln v. Prest* (1816), *Holt, N. P.* 181; *Mendizabal*

*Archer* (1843), 11 M. & W. 383; *Re Agra & Masterman's Bank, Ex p. Asiatic Banking Corp.* (1867), 16 L. T. 162. *Mentd. Jones v. Broadhurst* (1850), 9 C. B. 173.

**544. — Letter by drawee—Promise to give notice to A.—When A. might draw.]—**A., in London, consigned goods to B. at Bristol, to be disposed of for him by B., & after they were shipped off, wrote to B., enclosing the bill of lading, & requesting leave to draw on B. in about 3 months, to which B. replied, that "the moment the goods arrived, A. might depend on hearing from him when he might draw upon him, or that B. would send him a banker's draft." The goods arrived, & a bill at 2 months' sight was presented to B., which he, being a creditor of A., refused to accept:—*Held*: the promise by B. to give notice to A. when A. might draw upon him, was an undertaking to accept the bill, when drawn. *Smith v. Brown* (1815), 2 Marsh. 41; 6 Taunt. 340; 128 E. R. 1066.

**545. — Authorising firm to draw—& undertaking to honour bill when drawn—Bill taken by third person on credit of undertaking.]—**A bank wrote to a firm of merchants abroad a letter authorising the firm to draw upon the bank to the extent of £15,000, & undertaking to honour the bills drawn, that the credit thereby granted should remain in force for a year, & parties negotiating bills under it were requested to indorse particulars upon the letter itself, & that the bills must specify that they were drawn under credit of that letter. Claimants bought of the firm bills for £8,000 drawn by the firm upon the bank, & the purchaser was shown the letter, & himself indorsed particulars of the bills upon it. The firm was indebted to the bank in an amount exceeding the sums for which the bills were drawn, & the bank claimed a right to set off, & refused payment:—*Held*: whatever might be the effect of the letter at law, the bank was bound in equity to accept & pay the bills, for the letter was (1) an authority to the firm to draw them, & (2) in substance a promise to pay given to the person who might negotiate the bills, & showed that the

contract was one to be assigned free from any equities which might exist between the original parties to it.—*Re Agra & Masterman's Bank, Ex p. Asiatic Banking Corp.* (1867), 2 Ch. App. 414, L. JJ. Ch. 222; 16 L. T. 162; 15 W. R.

*Re Barned's Banking Co., Ex p.* (1868), 3 Ch. App. 753; *Re Natal*

*India, London & China* (1869), 38 L. J. Ch. 363. *Consd. Union Bank of Canada v. Cole* (1877), 47 L. J. Q. B. 100. *Reid. Rainford v. Keith & Blackman Co.*, [1905] 1 Ch. 296. *Mentd. Re Blakely Ordnance Co., Ex p. New Zealand Banking Corp.* (1867), 3 Ch. App. 154; *Re General Estates Co., Ex p. City Bank* (1868), 3 Ch. App. 758; *Graham v. Johnson* (1869), L. R. 8 Eq. 36; *Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1870-71), L. R. 11 Eq. 478; *Pellae v. Neptune Marine Insee.* (1880), 28 W. R. 405; *Re Romford Canal Co., Pocock's Claim, Trickett's Claim, Carow* (1883), 24 Ch. D. 55; *Blockerton v. Walker* (1885), 31 Ch. D. 151; *Re Goy, Farmer v. Goy*, [1900] 2 Ch. 149; *London & Provincial Marine & General Insee.*, [1912] 3 K. B. 614; *Dresdner Bank (London Agency)* (1920), 64 Sol. Jo. 426.

**546. — Bill drawn against bill of lading— Agreement to accept bill at ninety days' sight— Bill drawn at six months' sight.]—**A. & B., merchants in London, being applied to on behalf of C., resident at Demerara, to give him a letter of credit for £30,000 to enable him to purchase produce to load certain vessels for the port of London, & to accept his drafts at 90 days' sight on receiving invoice, bill of lading, & orders for insurance to the extent of certain fixed prices for various kinds of produce, wrote to C., stating that they consented to make the advances required upon the terms described, & that upon receiving the documents before mentioned, & no irregularity appearing, they would accept his drafts at the usual date to the extent of £30,000. C. shipped produce to the value of £800 on board one vessel, & to the value of £1,000 on board another, & sent the necessary documents to A. & B., & directed surplus of the proceeds of the first cargo, after repaying the advances of A. & B., should be paid to D. in London, & that the surplus of the second should be held by them to abide by his future advice. C. afterwards drew a bill upon A. & B. for £500 at 6 months' sight, & did not specify to the account of which cargo it was to be charged. A. & B. refused to accept it, & C. having thereupon brought an action against them:—*Held*: (1) C. was not bound to draw at 90 days, but might draw at any usual date, & 6 months could not be considered unusual, the jury not having found it to be so; (2) C. was not bound to specify to which cargo the bill was to be charged; for that, in the absence of any direction by him, A. & B. might charge it to either at their election.—*Laine v. Barclay* (1828), 1 B. & C. 898; 2 Dow. & Ry. K. B. 530; 1 L. J. O. S. K. B. 135; 107 E. R. 148.

**547. — Indorsement of bill of lading—& disposal of cargo.]—**Pltfs., merchants at New York, by direction & on account of B., forwarded to deft., a commission agent at Hull, employed by B., the invoices & bills of lading of two cargoes, against which they drew upon deft. bills, which he accepted & paid. Deft. sold the cargoes, which did not realise enough to cover the amount of his acceptances. Pltfs. afterwards, by direction of B., forwarded to deft. the invoice & bill of lading of another cargo, which had been purchased by B. with money supplied by pltfs., & the bills

**Sect. 1.—Authority to fill up. Sect. 2: Sub-sect. 1.]**

the use of the partnership, as the exigencies of business might require, according to a course of dealing in other instances. After A.'s death, & the surviving partners had assumed a new firm, the clerk filled up the bill, inserting a date prior to A.'s death, & sent it into circulation:—*Held*: the surviving partners were liable as drawers of the bill to a *bond fide* indorsee for value, although no part of the value came to their hands.—*USHER v. DAUNCEY* (1814), 4 Camp. 97, N. P.; *subsequent proceedings* (1815), 4 M. & S. 94.

*Annotation*:—*Reid. Carter v. White* (1882), 20 Ch. D. 225.

**562. — Death of acceptor.]—**Where value is given for a blank acceptance, his authority to fill it up, being coupled with an interest, is not revoked by death, but where there is no such interest, the authority to fill up & negotiate is terminated by the death of the acceptor.—*HATCH v. SEARLES, STANWAY'S CASE, CONWAY'S CASE* (1854), 2 Sm. & G. 147; 22 L. T. O. S. 280; 2 W. R. 242; 65 E. R. 342; *affd.*, 24 L. J. Ch. 22, L. J.J.

*Annotations*:—*Consd. Carter v. White* (1882), 20 Ch. D. 225. *Reid. France v. Clark* (1884), 26 Ch. D. 257, C. A. *Mentd. Faulks v. Atkins* (1893), 10 T. L. R. 178.

**563. — Filling in drawer's name.]—**A person, to whom an acceptance blank as to drawer's name is delivered for value, can complete the bill by filling in the drawer's name even after the acceptor's death.—*CARTER v. WHITE* (1883), 25 Ch. D. 666; 54 L. J. Ch. 138; 50 L. T. 670; 32 W. R. 692, C. A.

*Annotations*:—*Mentd. Re Wolmershausen, Wolmershausen v. Wolmershausen* (1890), 62 L. T. 541; *Barber v. Mackrell* (1892), 68 L. T. 29, C. A.; *Chamberlain v. Young*, [1893] 2 Q. B. 206, C. A.

**564. — No authority to insert particular place of payment.]—**The giving an acceptance in blank on a stamped piece of paper to a person for valuable consideration, it being arranged that he should fill it up with a sum agreed upon covered by the stamp, conveys no authority to him except to draw a bill on it with a general acceptance, & his inserting a particular place of payment before

*r. — Bankruptcy of acceptor.]—*A person who has obtained for his own accommodation a blank acceptance is barred by the acceptor's sequestration from making use of it thereafter.—*M'MEKIN v. RUSSELL & TUDHOPE* (1881), 8 R. (Ct. of Sess.) 587.—*SCOT.*

**565 i. Blank indorsement.]—**Where a person writes his name across the back or unstamped side of a stamped blank bill form, it is authority to fill it up in such way only as to make the person so signing it liable as an indorser or surety.—*BELFAST BANKING CO., LTD. v. KROWN* (1898), 33 L. L. T.

**565 ii. — Amount.]—**On 9, deft. indorsed a promissory note made by S. & C., bearing that date, to him, but without any amount filled in. On the same day, C. deposited it with plffs., authorising them to fill it in for the amount of S. & C.'s then due paper, as also for other paper falling due before Oct. 22. On Oct. 21, plffs. filled in the note for \$4,835.84, which included deft.'s then due paper, a sum of \$2,000 coming due on the following day, & \$2.94, the amount of the stamps, which they then affixed:—*Held*: deft., by so indorsing & authorising plffs., as *bond fide* for value, to fill in the amount.

*NATIONALE v. SPARKS* (1877), 27 C. P. 320; 2 A. R. 112.—*CAN.*

**— & date.]—**The indorser of a note indorsed it for the accommodation of the maker, leaving the date & sum blank, which was afterwards filled up by the maker, & the note dated of a time later than the blank was indorsed, but prior to the time when the note was actually filled up:—*Held*: the note was good the indorser.—*SANFORD v. (1841)*, 6 O. S. 104.—*CAN.*

**— Maker's payee's name.]—**It is no objection to the validity of a note, that when indorsed to plffs. it was not signed by the maker; the subsequent filling up of the maker's name, or of the amount, or of a payee's name, will be treated as if made before the indorsement.—*v. MCCARTY* (1850), 7 U. C. R. *CAN.*

Where a promissory note, with a blank left for the payee's name, is delivered by the maker to a creditor in payment of a debt, there is an implied authority given to the creditor to fill in such blank.—*BAGLEY BROTHERS & Co. v. ELLISON* (1890), 16 V. L. R. 263.—*AUS.*

the signature of the acceptor is equivalent to a material alteration, & vitiates the acceptance.—*HANBURY v. LOVETT* (1868), 18 L. T. 366; 16 W. R. 795.

**565. Blank indorsement—Amount—& date.]—**An indorsement written on a blank note or cheque, will afterwards bind the indorser for any sum & time of payment, which the person to whom he entrusts the note chooses to insert in it.—*RUSSEL v. LANGSTAFFE* (1780), 2 Doug. K. B. 514; 99 E. R. 328.

*Annotations*:—*Apld. Young v. Wright* (1807), 1 Camp. 139, N. P. *Consd. Snaith v. Mingay* (1813), 1 M. & S. 87. *Apld. Usher v. Dauncey* (1814), 4 Camp. 97. *Reid. Schultz v. Astley* (1836), 2 Bing. N. C. 544; *Montague v. Perkins* (1853), 22 L. J. C. P. 187; *Hatch v. Searles* (1854), 2 Sm. & G. 147; *Stoessiger v. S. E. Ry. Co.* (1854), 3 E. & B. 549; *Re North British Australasian Co., Ex p. Swan* (1860), 7 C. B. N. S. 400; *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603; *London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 96; *Nash v. De Freville*, [1900] 2 Q. B. 72, C. A. *Mentd. Warrington v. Furber* (1807), 8 East, 242; *Pickin v. Graham* (1833), 1 Cr. & M. 725.

**566. Name of payee in blank.]—**A bill of exchange drawn & issued in blank for the name of the payee may be filled up by a *bond fide* holder with his own name, & will bind the drawer.—*CRUCHLEY v. CLARANCE* (1813), 2 M. & S. 90; 105 E. R. 316; *subsequent proceedings*, *CRUTCHLY v. MANN* (1814), 5 Taunt. 529.

*Annotations*:—*Apld. Atwood v. Griffin* (1826), 2 C. & P. 368. *Consd. M'Call v. Taylor* (1865), 19 C. B. N. S. 301; *Harvey v. Cano* (1876), 34 L. T. 64. *Reid. Montague v. Perkins* (1853), 22 L. J. C. P. 187.

**567. —.]—**A bill made payable to the order of — may be filled up by any bearer, who can show that he came regularly to the possession of it, with his own name; & if such a bill be drawn in Jamaica on a stamp of that island only, an English stamp is not necessary to the validity of the insertion of the bearer's name in England.—*CRUTCHLY v. MANN* (1814), 5 Taunt. 529; 1 Marsh. 29; 128 E. R. 796.

*Annotations*:—*Distd. MacCall v. Taylor* (1865), 6 New Rep. 207. *Reid. Herdman v. Wheeler*, [1902] 1 K. B. 361. *Mentd. Harvey v. Cano* (1876), 34 L. T. 64.

**568. Date left blank.]—**Action on a bill of exchange, given & accepted in blank as to the

*i. —.]—GARDNER v. LECKER*, 16 R. L. N. S. 14.—*CAN.*

**iii. —.]—**Deft. gave blank cheques to D. who made them payable to L. & Co. to whom they were delivered for valuable consideration. On L. & Co. presenting the cheques they were dishonoured; L. & Co. then sold the cheques to plff. There was no proof that the cheques were not filled up in accordance with D.'s mandate:—*Held*: deft. was liable on his signature.—*BACON v. DECARIE* (1908), Q. R. 34 S. C. 103; 4 E. L. R. 563.—*CAN.*

**568 iv. —.]—**A promissory note payable to — or order, cannot be recovered by the person to whom it was given, either as payee or bearer, without inserting his name in the blank as payee. Any *bond fide* holder of such note may insert his name in the blank as payee.—*MUTUAL SAFETY INSURANCE CO. v. PORTER* (1851), 2 All. 230.—*CAN.*

**568 v. — & rate of interest.]—**The indorsers of a promissory note, containing blank spaces for the name of the payee & for the rate of interest, are estopped from denying that they have given the maker authority to fill in the blanks.—*BURTON v. GORFIN* (1897), 5 B. C. R. 454.—*CAN.*

**568 i. Date left blank.]—**Deft. gave



date, which was filled in afterwards, the bill being payable 6 months after date:—*Held*: pltf. was entitled to recover.

Is not leaving the date in blank an authority to fill in any date that the stamp will carry? (PARKE, B.).—*BRIAN v. QUACKERSTEIN* (1848), 12 L. T. O. S. 153, 454.

**569. Period of currency omitted.**—An undated bill, accepted in 1887, payable — months after date was in Dec., 1888, dated Sept. 24, 1887, & made payable 18 months after date. It subsequently was negotiated to a *bond fide* holder:—*Held*: he might recover on it against the acceptor.—*MORGAN'S LTD. v. HESKETH* (1890), 6 T. L. R. 162, D. C.

**570. Amount & date blank**—Bill drawn in blank abroad—Filled in & indorsed by agent—Liability of drawer.]—The drawer of an unstamped bill of exchange drawn abroad, but filled up in England as to date & amount by his agent contrary to his intentions, is liable to an innocent holder for value.—*BARKER v. STERNE* (1854), 9 Exch. 684; 23 L. J. Ex. 201; 23 L. T. O. S. 95; 2 W. R. 418; 2 C. L. R. 1020; 156 E. R. 293. *Annotation*:—*Reid*. London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777, H. L.

**571. Delegation of authority.**—If a debtor delivers to his order a blank transfer by way of security, that does not enable the creditor to delegate to another person authority to fill it up for purposes foreign to the original contract.—*FRANCE v. CLARK* (1884), 26 Ch. D. 257; 53 L. J. Ch. 585; 50 L. T. 1; 32 W. R. 466, C. A.

*Annotations*:—*Folld*. Hamill v. Lilley, Lilley v. Hamill & Colorado United Mining Co. (1886), 2 T. L. R. 596. *Distd*. Faulks v. Atkins (1893), 10 T. L. R. 178. *Consd*. Fox v. Martin (1895), 64 L. J. Ch. 473. *Distd*. Fry v. Smellie, [1912] 3 K. B. 282, C. A. *Reid*. Hutchison v. Colorado United Mining Co., Hamill v. Lilley (1886), 3 T. L. R. 265, C. A.; Watkin v. Lamb (1901), 85 L. T. 483; Herdman v. Wheeler, [1902] 1 K. B. 361; Montagu v. Weston Clevedon & Portishead Light Ry's Co. (1903), 19 T. L. R. 272; Lloyd's Bank v. Cooke, [1907] 1 K. B. 794, C. A.; Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A. *Mentd*. Easton v. London Joint Stock Bank (1886), 55 L. T. 678, C. A.; Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia (1888), 38 Ch. D. 388, C. A.; Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank (1890), 39 W. R. 449, C. A.; Moore v. North Western Bank (1891), 64 L. T. 456; Powell v. London & Provincial Bank, [1893] 2 Ch. 555, C. A.; London & Midland Bank v. Mitchell, [1899] 2 Ch. 161; Stubbs v. Slater & Bond (1910), 102 L. T. 444, C. A.

a letter of credit to S., who deposited the letter with pltf., & upon the security of the letter & of bills drawn against it upon defts., obtained advances from pltf. The bills were drawn in accordance with the terms of the letter of credit & were at first undated. Pltf. *bond fide* held them over for a short time, & subsequently at the request of S. filled in the date. The addition of the date was made *bond fide*, but owing to omission was not made in the case of one of the bills until the day after the sudden death of S. The bills were presented to defts. for acceptance within the period specified in the letter of credit, but acceptance was refused. In an action by pltf. for the amount of the bills:—*Held*: pltf. were entitled to recover.—*ORIENTAL BANKING CORPN. v. LIPPERT & Co.* (1875), Buch. 152.—S. AF.

**569 L. Period of currency**  
A promissory note payable months after date "is not a promissory note payable on demand, & cannot be sued on in its incomplete state. *Semble*: the holder before suing might have filled in the blank.—*COLONIAL BANK OF NEW ZEALAND v. SPENCE* (1883), 9 N. Z. L. R. 78.—N.Z.

**a. Rate of interest.**—Where a promissory note is signed or indorsed, leaving a blank space for the rate of interest, any party in possession of the note has under 1890 Act, s. 20, made applicable to promissory notes by s. 88, *prima facie* authority to fill in any rate of interest.—*BRITISH COLUMBIA LAND & INVESTMENT AGENCY, LTD. v. ELLIS* (1897), 6 B. C. R. 82.—CAN.

**b. —.**—Where a blank in a promissory note for the insertion of a rate of interest has not been filled in at the time it is tendered for discount, such note is not wanting in a material particular.—*BANK OF BRITISH NORTH AMERICA v. ROBERTSON*, [1917] 1110; 110 L. R. 166.

#### PART VII. SECT. 2, SUB-SECT. 1.

**574. Blank acceptance**—*Authority to fill in amount.*—To a declaration upon a note, by indorsee against maker, deft. pleaded that G. & Co. being indebted to M. & Co., delivered to them a blank note with authority to fill it up with the amount of the debt & payable within 2 months, & when so filled up, but not otherwise, to deliver it as the note of G. & Co.; & that after payment of the debt, & after more than

#### SECT. 2.—LIMITATION OF AUTHORITY.

##### SUB-SECT. 1.—WITHIN REASONABLE

*Sec* 1882 Act, s. 20 (2).

**572. Blank acceptance.**—In July, 1846, deft., having been arrested under a ca. sa., in order to obtain his discharge gave to the attorney of the execution creditor £5, & a blank promissory note stamp with his name written on it. In May, 1851, deft. obtained a certificate in bkpcy., & in Oct., 1852, the attorney filled up the blank stamped paper, by making it a promissory note for £24 18s. 6d., at 1 month's date, & indorsed it to pltf. for value:—*Held*: it was properly left to the jury to say whether the stamped paper was filled up within a reasonable time, considering the circumstances of deft., & his ability to pay the note.—*TEMPLE v. PULLEN* (1853), 8 Exch. 389; 22 L. J. Ex. 151; 20 L. T. O. S. 252; 155 E. R. 1399.

*Annotation*:—*Consd*. Montague v. Perkins (1853), 22 L. J. C. P. 187.

**573. —.**—It is a question for the jury to ascertain whether there was any reasonable limitation in point of time for filling up the blank space in a promissory note.—*MULHALL v. NEVILLE* (1852), 8 Exch. 391; 20 L. T. O. S. 113; 155 E. R. 1400.

*Annotations*:—*Consd*. Montague v. Perkins (1853), 22 L. J. C. P. 187. *Mentd*. Barker v. Sterne (1854), 2 C. L. R. 1020.

**574. Authority to fill in amount**  
**name of drawer.**—Deft., in 1840, gave S., for value, his acceptance in blank, on a 5s. stamp. S., in 1852, & as the jury found, not within a reasonable time, filled in his own name as drawer, for £200 at 5 months. Deft., being sued on the bill by an innocent indorsee for value, pleaded that he did not accept, & Stat. Limitations:—*Held*: pltf. was entitled to the verdict on both issues, notwithstanding the finding of the jury.—*MONTAGUE v. PERKINS* (1853), 17 Jur. 557; 1 W. R. 437; 1 C. L. R. 579; *sub nom*. MONTAGUE v. PERKINS, 22 L. J. C. P. 187; 21 L. T. O. S. 185.

*Annotations*:—*Distd*. Carter v. White (1882), 20 Ch. D. 225. *Reid*. Hatch v. Searles (1854), 2 Sm. & G. 147; *Re* North British Australasian Co., *Ex p*. Swan (1860), 7 C. B. N. S. 400; Harvey v. Cane (1876), 34 L. T. 64; London & South Western Bank v. Wentworth (1880), 5 Ex. D.

15 months, & after revocation of all authority by lapse of time, by the express acts of the parties & by the dissolution of the firm of G. & Co., the said M. & Co. filled up & delivered the note to pltf.:—*Held*: the plea was bad.—*MERCHANTS BANK v. GOOD* (1890), 6 Man. L. R. 3

**Word "pay" omitted.**—The acceptor of a bill of exchange signed without noticing that, by a clerical error, the word "pay" had been omitted from the bill. After maturity application for payment was made by the holder for value, whereupon the acceptor pointed out the deficiency, & repudiated liability; thereafter the holder inserted the word "pay," the date of so doing being 4 months after maturity:—*Held*: the omission had been supplied within a "reasonable time."—*MACLEAN v. M'EWEN & SON* (1899), 80 L. R. 284; 1 F. (Cl. of Sess.) 381.

of showing that a bill signed in blank had not been filled up within

*Co.* (1896), 36 Sc. L. R. 86.—SCOT.



*Sect. 2.—Limitation of authority: Sub-sect. 2.]*

**SUB-SECT. 2.—IN ACCORDANCE WITH AUTHORITY.**

*See 1882 Act, s. 20 (2).*

**575. Blank acceptance—Fictitious payee—Indorsee for value.]—**A. having signed his name to a blank paper duly stamped, & delivered it to B. for the purpose of drawing a bill of exchange in such manner as B. should think fit, B. drew a bill payable to a fictitious payee or order, & indorsed it over for a valuable consideration to C. who was ignorant of the transaction:—*Held*: C., the indorsee, might maintain an action against A. as the drawer of a bill payable to bearer on a count to that effect, or, C. might recover, on a count stating the special circumstances of the case, if that count did not vary from the verdict.—*COLLIS v. EMMETT* (1790), 1 Hy. Bl. 313; 126 E. R. 185.

—*Consd.* Gibson v. Minet (1791), 1 Hy. Bl. 569, H. L. *Distd.* Awde v. Dixon (1851), 6 Exch. 869. *Reid.* Snath v. Mingay (1813), 1 M. & S. 87; *Re* Stein, *Ex p.* Royal Bank of Scotland (1815), 2 Rose, 197, L. C.; London & South Western Bank v. Wentworth (1880), 5 Ex. D. 96.

**576. — Estoppel of acceptor.]—**A. sold cattle to B., for which B. paid by an acceptance, in which a blank was left for the drawer's name, & which he remitted through the post to A. D. & Co. afterwards received the bill, purporting to be in the name of A., as drawer & indorser, for a valuable consideration. A. denied that he had ever received the bill, or that he had ever authorised payment by an acceptance, & also stated that the drawing & indorsement were forgeries. A. brought an action against B. for debt, & D. & Co. threatened to sue him also upon the bill:—*Held*: deft., by allowing the bill to go out in blank, was estopped from saying that the indorsement was not genuine, as the acceptance admitted the handwriting of the drawer.—*FARR v. WARD* (1837), 2 M. & W. 844; *Murp. & H.* 244; 6 L. J. Ex. 213; 150 E. R. 1000; *subsequent proceedings*, 3 M. & W. 25.

*Annotation*:—*Mentd.* Slaney v. Sidney (1845), 3 Dow. & L. 250.

**577. — — —.]—**When a bill is accepted in blank for the purpose of being negotiated, & is afterwards filled in with the name & signature of a person as drawer & indorser, the acceptor cannot, as against a *bond fide* indorsee for value, adduce evidence to show that either the drawing or indorsement is a forgery.—*LONDON & SOUTH WESTERN BANK v. WENTWORTH* (1880), 5 Ex. D. 96; 49 L. J. Q. B. 657; 42 L. T. 188; 28 W. R. 516.

—*Consd.* Scholfield v. Londesborough, [1895] A. C. 514, H. L.; *Smith v. Prosser*, [1907] 2 K. B. 735, C. A. *Reid.* Herdman v. Wheeler, [1902] 1 K. B. 361.

**578. — Lost or stolen—No delivery with authority to convert into bill.]—**Deft. gave H. his blank acceptance on a stamped paper, & authorised H. to fill in his name as drawer. H. returned the blank acceptance to deft. in the same state in which he received it. Deft. put it into a drawer of his writing table at his chambers, which was unlocked, & it was lost or stolen. C. afterwards filled in his own name without deft.'s authority, & an action was brought on it by pltf. as indorsee for value:—*Held*: deft. was not liable on the bill on the grounds; (1) there was no estoppel between the parties, which prevented deft. from setting up the facts, & if deft. had been guilty of negligence

it was not the proximate or effective cause of the fraud; (2) after the return of the blank acceptance by H. deft. had never authorised any one to fill in a drawer's name, & he had never issued the acceptance intending it to be used.—*BAXENDALE v. BENNETT* (1878), 3 Q. B. D. 525; 47 L. J. Q. B. 624; 40 L. T. 23; 42 J. P. 677; 26 W. R. 899, C. A.

*Annotations*:—*Apld.* Scholfield v. Londesborough, [1895] 1 Q. B. 536, C. A. *Consd.* Scholfield v. Londesborough, [1896] A. C. 514, H. L.; *Lloyd's Bank v. Cooke*, [1907] 1 K. B. 794, C. A.; *Smith v. Prosser*, [1907] 2 K. B. 735, C. A. *Reid.* London & South Western Bank v. Wentworth (1880), 5 Ex. D. 96; *Re* Cooper, *Cooper v. Vesey* (1882), 20 Ch. D. 611, C. A.; *Marcussen v. Birkbeck Bank* (1889), 5 T. L. R. 179; *Watkin v. Lamb* (1901), 85 L. T. 483; *Herdman v. Wheeler*, [1902] 1 K. B. 361. *Mentd.* Patent Safety Gun Cotton Co. v. Wilson (1880), 49 L. J. Q. B. 713, C. A.; *Brocklesby v. Temperance Permanent Bldg. Soc.* (1893), 42 W. R. 684, C. A.; *Scholfield v. Londesborough*, [1894] 2 Q. B. 660; *Lewis v. Clay* (1897), 77 L. T. 653; *Nash v. De Freville*, [1900] 2 Q. B. 72, C. A.; *De La Bere v. Pearson*, [1907] 1 K. B. 483; *Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439, C. A.; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777, H. L.

Lost bills generally, *see* Part XVI., *post*.

**579. — By partner without authority—No authority to fill in name of drawer.]—**Pltf. & C. were partners, & defts., L. & F., carried on in partnership the business of shipbrokers. C. being in debt to pltf. & being pressed by him for payment, delivered to him two bills purporting to be accepted in the partnership name of defts. At the time of handing over the bills to pltf., no drawer's name had been filled in, but C. stated to him that the consideration consisted of coals supplied. Pltf. received the bills, believing that they had been lawfully accepted, but he afterwards began to suspect that there was something wrong, & after his suspicions had been aroused, he filled in the names of his firm as drawers. It afterwards appeared that F. had accepted the bills without the authority of L.:—*Held*: pltf. could not recover upon the bills against L.—*HOGARTH v. LATHAM & CO.* (1878), 3 Q. B. D. 643; 47 L. J. Q. B. 339; 39 L. T. 75; 26 W. R. 388, C. A.

*Annotations*:—*Distd.* London & South Western Bank v. Wentworth (1880), 5 Ex. D. 96. *Consd.* France v. Clark (1884), 28 Ch. D. 257, C. A. *Expld.* Oakley v. Boulton, Maynard (1888), 5 T. L. R. 60, C. A. *Distd.* Faulks v. Atkins (1893), 10 T. L. R. 178. *Reid.* Watkin v. Lamb (1901), 85 L. T. 483; *Herdman v. Wheeler*, [1902] 1 K. B. 361. *Mentd.* Baxendale v. Bennett (1878), 40 L. T. 23, C. A.

**580. — By partner with limited authority—No authority to fill in name of drawer.]—**Pltf. sued on two out of three bills for £166 each, accepted by C., partner in the firm of C. & H. At the time of the acceptance, there was no drawer's name, but they were brought to pltf. by B. to be discounted. Pltf. wrote to C. & H., & received a reply in C.'s writing that the bills were in order. He then filled in his name as drawer, & discounted the bills for B. for £144 each. In an action on the bills, H. said they were accepted by C. for his own purposes, without authority, & were accommodation bills. Neither C. nor B. was called at the trial:—*Held*: C.'s only authority was to sign on firm business for firm purposes, & pltf., by filling up the blank acceptances, could only do so in accordance with the authority given, & his so filling in his name did not make them negotiable instruments.—*OAKLEY v. BOULTON, MAYNARD & CO.* (1888), 5 T. L. R. 60, C. A.

**581. — Figures in margin—Fraudulent insertion of amount & alteration—Holder for value.]—**

Deft. signed an acceptance, the amount in the body of which was then left in blank, but in the margin of which were the figures £14 0s. 6d., that being the sum for which deft. desired to accept. He then handed the acceptance to the drawer, who subsequently filled in the blank in the body of the bill for £164 0s. 6d. & fraudulently altered the figures in the margin to that sum. The bill was then indorsed by the drawer to pltf., who took it *bonâ fide* for value for the larger amount:—*Held*: deft. was liable on the bill for such larger amount, on the grounds (*inter alia*) (1) the marginal figures were not an essential part of a bill of exchange; (2) no alteration, even if fraudulent & unauthorised, of the marginal figures could vitiate the bill as a bill for the full amount inserted in the body, when it reached the hands of a holder for value who was unaware that the marginal figures had been improperly altered.—*GARRARD v. LEWIS* (1882), 10 Q. B. D. 30; 47 L. T. 408; 31 W. R. 475.

*Annotations*:—*Distd.* Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A. *Refd.* Herdman v. Wheeler, [1902] 1 K. B. 361.

**582. — Particular purpose—Authority to fill in name of drawer.**—In pursuance of an agreement made between pltf. & R. for accommodation in relation to acceptances, pltf. handed R. certain bills, which they had accepted, in which the dates & drawers' names were left blank, which under the agreement were to be provided by R. The bills were to be used by R. to recoup himself for advances to pltf., & for the purpose of raising money for pltf. R. used the bills for his own purposes, & having filled in the dates, handed them to L. who, acting in good faith, inserted drawers' names. In an action against L. for conversion:—*Held*: (1) although L. took the bills in good faith, he was liable, as he took them with only an acceptor's name but no drawer's name, & so ran the risk that R. had no authority, or only a limited authority, to allow a drawer's name to be put in the instrument; (2) R. had no authority to insert a drawer's name in the circumstances, as the only authority he had to insert a name was that of a drawer who would take the bill for pltf.' benefit; (3) the insertion of the words in the agreement, "drawers to be provided by R.," did not extend the limited authority actually given.—*WATKIN v. LAMB* (1901), 85 L. T. 483; 17 T. L. R. 777.

**583. Note signed in blank—Payee's name omitted—Delivery conditional on other person joining as maker—Misrepresentation of authority.**—Deft. agreed to join his brother in making a promissory note for his accommodation, provided

R. would also join, & deft. signed an instrument in the form of a promissory note, a blank being left for the name of the payee. R. refused to join, & afterwards deft.'s brother delivered the imperfect instrument to pltf. for value, representing that he had authority to deal with it, & pltf.'s name was inserted as payee:—*Held*: pltf. could not recover on the note against deft. *Semble*: in such circumstances, the insertion of pltf.'s name as payee, rendered the instrument a forgery.—*AWDE v. DIXON* (1851), 6 Exch. 809; 20 L. J. Ex. 295; 17 L. T. O. S. 180; 155 E. R. 798.

*Expld.* Mountague v. Perkins (1853), 17 Jur. 557. *Hogarth v. Latham* (1878), 3 Q. B. D. 643, C. A. *Harvey v. Cane* (1876), 34 L. T. 64; *Herdman* [1902] 1 K. B. 361, D. C. *Mentd.* Mulhall v. Neville, 8 Exch. 391.

**584. — Conditional delivery to agent—Fraudulent delivery by agent.**—Deft. in South Africa, being about to leave for England, gave to two persons a power of attorney to act for him in his absence. He further, in anticipation of the possibility of funds being suddenly required during his absence, signed his name on two blank unstamped pieces of paper, which were lithographed forms of promissory notes, & handed them to one of the two agents with instructions that they should be retained in the custody of his attorney until deft. should, by telegram or letter from England, give instructions for their issue as promissory notes & as to the amounts for which they should be filled up. After deft. had left South Africa, the attorney to whom he had handed the documents, without waiting for instructions from deft., which were in fact never given, & in fraud of deft., filled in the blanks in the documents so as to make them appear to be promissory notes for considerable sums & sold them to pltf., who took them honestly & in good faith, & without notice of the fraud, & gave full value for them:—*Held*: as deft. handed the notes to his agent as custodian only, & not with the intention that they should be issued as negotiable instruments, he was not estopped from denying the validity of the notes as between himself & pltf., & the action was not maintainable.—*SMITH v. PROSSER*, [1907] 2 K. B. 735; 77 L. J. K. B. 71; 97 L. T. 155; 23 T. L. R. 507; 51 Sol. Jo. 551, C. A.

*Annotations*:—*Auld.* Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A. *Refd.* London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777, H. L. *Mentd.* Morison v. London County & Westminster Bank (1913), 108 L. T. 379.

**585. Blank instrument—Liability of party.**—If a man once puts his name to a negotiable instrument he shall be liable to a *bonâ fide* owner without

## PART VII. SECT. 2, SUB-SECT. 2.

**584 i. Note signed in blank—Conditional delivery to agent—Fraudulent delivery by agent.**—Pltf. made application for a policy of life insurance & signed a bank note, partly filled in, on condition that nothing was to be done with it until pltf. passed required medical examination, when if successful he would give cheque to take up note. The insurance agent fraudulently filled up the note & disposed of it to the U. Bank for value. The U. Bank handed note to the D. Bank for collection, & they presented it to the H. Bank, where pltf. had a deposit account, & the H. Bank paid the note & charged it against pltf.'s account:—*Held*: a document in the form of a promissory note, but wanting in any material particular, is not "delivered

in order that it may be converted into" a note, & payment cannot be enforced against maker, even by a holder in due course.—*HUBBERT v. HOME BANK* (1910), 15 O. W. R. 277; *affd.* 15 O. W. R. 533; 20 O. L. R. 651; 1 O. W. N. 542.—*CAN.*

—*Deft.* a note in blank & handed it to his agent to be filled in & discounted in certain circumstances. The agent fraudulently filled in the note for \$1,000 & pledged it with a bank as collateral security for his personal account. This was done long after the note had been left with the agent. The circumstances never arose & deft. received no consideration:—*Held*: deft. was not liable.—*RAY v. WILSON* (1910), 16 O. W. R. 578; *affd.* 19 O. W. R. 470; 21 O. W. R. 45 S. C. R. 401.—*CAN.*

## 584 iii.

C., & others having held a meeting for the organisation of a co. & agreed that each would invest \$200 in stock of the co. C. induced deft. to sign his name to a printed form of promissory note, leaving the other blanks unfilled, & to hand it over to him, on the understanding that it was to be filled up with the name of the co. as payee for the sum of \$200 & used only to pay for the shares when the co. should be incorporated. The co. was never formed, & C. fraudulently filled in his own name as payee, & indorsed the note to pltf. for value before maturity:—*Held*: there was not such a delivery by deft. with the intention that the instrument should become a negotiable promissory note as would make him liable upon it.—*CAMPBELL v. BOUSQUX* (1914), 28 W. L. R. 118.—*CAN.*



## 74 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Limitation of authority: Sub-sect. 2. Sects. 3 & 4.]*

notice in respect of what may be added to give effect or negotiability to the instrument, notwithstanding this may be done in the absence of authority or even for the purposes of fraud (COCKBURN, C.J.).—SWAN v. NORTH BRITISH AUSTRALASIAN CO. (1863), 2 H. & C. 175; 2 New Rep. 521; 32 L. J. Ex. 273; 10 Jur. N. S. 102; 11 W. R. 862; 159 E. R. 73, Ex. Ch.

*Annotations:—*Consd. Halifax Grdns. v. Wheelwright (1875), L. R. 10 Exch. 183; Scholfield v. Lonsborough, [1894] Q. B. 660. *Reid.* Hunter v. Walters, Curling v. Walters, Darnell v. Hunter (1871), 7 Ch. App. 75, L. C. & L. J.J.; Coventry v. G. E. Ry. Co. (1883), 11 Q. B. D. 776, C. A.; Hall v. West End Advance Co. (1883), Can. & El. 161, N. P.; France v. Clark (1884), 26 Ch. D. 257, C. A.; Staple of England v. Bank of England (1887), 21 Q. B. D. 160, C. A.; Vagliano v. Bank of England (1888), 22 Q. B. D. 103; Scholfield v. Lonsborough, [1896] A. C. 514, H. L.; Union Credit Bank v. Mersey Docks & Harbour Board, [1899] 2 Q. B. 205. *Mentd.* Re Bahia & San Francisco Ry. Co. (1868), L. R. 3 Q. B. 584; Foster v. Mackinnon (1869), L. R. 4 C. P. 704; Arnold v. Cheque Bank, Arnold v. City Bank (1876), 1 C. P. D. 578; Dickson v. Reuter's Telegram Co. (1877), 3 C. P. D. 1, C. A.; Johnson v. Credit Lyonnais Co. (1877), 3 C. P. D. 32, C. A.; Ortigosa v. Brown (1877), 47 L. J. Ch. 168; Haxendale v. Bennett (1878), 3 Q. B. D. 525, C. A.; Soc. Générale de Paris v. Walker (1885), 11 App. Cas. 20, H. L.; Seton v. Lafone (1887), 19 Q. B. D. 68, C. A.; Bank of England v. Vagliano, [1891] A. C. 107, H. L.; Favell v. Wright (1891), 64 L. T. 85, D. C.; Brocklesby v. Temperance Bldg. Soc. (1893), 2 R. 694, C. A.; Lewis v. Clay (1897), 77 L. T. 653; Spooner v. Browning, Todd, & Whish (1897), 77 L. T. 685; Farquharson v. King, [1901] 2 K. B. 697, C. A.; Rimmer v. Webster, [1902] 2 Ch. 163; Bell v. Marsh, [1903] 1 Ch. 528, C. A.; Longman v. Bath Electric Tramways, [1905] 1 Ch. 646, C. A.; Kepitigalla Rubber Estates v. National Bank of India, [1909] 2 K. B. 1010; Carlisle & Cumberland Banking Co. v. Bragg, [1911] 1 K. B. 489, C. A.; Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A.; London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777, H. L.; Brandon v. Michelham (1919), 35 T. L. R. 617.

1. Blank stamped paper—Limit of amount fraudulently exceeded—Negotiation—Payee.]—Deft., having agreed to borrow £15 from A., signed & handed to A. a blank stamped paper, which he authorised A. to fill up as a promissory note payable to A. & for £15 only. The stamp upon the paper was sufficient to cover a sum of £30. A., in breach of his authority, fraudulently filled up the paper as a promissory note for £30 & payable to pltf., & he handed it to pltf., who gave value for it without notice of A.'s breach of authority. A. misappropriated the proceeds. In an action by pltf. on the promissory note:—*Held*: the delivery of the note by A. to pltf. was not a negotiation of the note within 1882 Act, s. 20 (2),

c. — Conditional partner—Note used for purpose.]—In an action on a joint & several promissory note made by defts. T. & P., P. alleged that the note was originally a blank note given by him to T. for use in their common business, & to be used for it alone, & that he did not authorise T. to complete the note in favour of pltf.:—*Held*: pltf. could recover against T. in full, & as against P. the action should be dismissed.—BROWN v. CHAMBLAIN (1912), 90 Q. W. R. 962; 3 O. W. N. 569; 2 D. L. R. 918.—CAN.

f. Pleading.]—In an action by the indorsee against the acceptor of a bill of exchange deft. pleaded that he accepted a bill of exchange stamp in blank, upon the agreement that A. & B. should draw upon the stamp a bill for but that without his knowledge or A. & B. drew upon the bill for £14, & indorsed it to pltf., who

so as to entitle pltf. to recover. *Qu.*: whether the payee of a note can in any circumstances be a holder of it in due course.—HERDMAN v. WHEELER, [1902] 1 K. B. 361; 71 L. J. K. B. 270; 86 L. T. 48; 50 W. R. 300; 18 T. L. R. 190; *sub nom.* HURDMAN v. WHEELER, 46 Sol. Jo. 139, D. C.

*Annotations:—*Consd. Lloyd's Bank v. Cooke, [1907] 1 K. B. 794, C. A. *Apld.* Smith v. Prosser (1907), 77 L. J. K. B. 71.

587. — — — — —.]—1882 Act, s. 20, whatever the true construction of it may be, has not the effect of preventing the common law doctrine of estoppel from being applicable to negotiable instruments.

Deft. signed his name on a blank stamped piece of paper, & entrusted the paper to A. with authority to fill it up as a promissory note for a certain sum payable to pltf. & deliver it to pltf. as security for an advance to be made by them. A. fraudulently filled the paper up as a promissory note for a larger amount, & obtained by means of it an advance of that amount from pltf., who had no notice of the fraud:—*Held*: deft. was estopped from denying the validity of the note as between himself & pltf., & action was maintainable against him for the full amount of the note.

According to the true construction of s. 20, the estoppel created by the proviso to that sect. operates in favour of the payee of a promissory note as well as in favour of an indorsee (FLETCHER MOULTON, L.J.).—LLOYD'S BANK, LTD. v. COOKE, [1907] 1 K. B. 794; 76 L. J. K. B. 666; 96 L. T. 715; 23 T. L. R. 429, C. A.

*Annotations:—*Distd. Smith v. Prosser, [1907] 2 K. B. 735, C. A. *Consd.* Talbot v. Von Boris, [1911] 1 K. B. 854, C. A. *Reid.* Paine v. Bevan & Bevan (1914), 110 L. T. 933; Macmillan v. London Joint Stock Bank, [1917] 2 K. B. 439, C. A.; London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777, H. L. *Mentd.* Shaw v. Holland, [1913] 2 K. B. 15, C. A.

588. Blank cheque—Limited authority as to payee—Holder without value.]—Pltf., a stock-broker, employed a confidential clerk. On settling days on the Stock Exchange, it was pltf.'s practice to sign a number of blank cheques & to hand them over to the clerk, giving him authority to fill in the names of persons, with whom plf. did business & whose accounts he wished to settle, & the amount of the sums due to them. The authority of the clerk was absolutely limited to this. The clerk had entered into betting transactions with defts. & had incurred certain debts. To pay those debts he wrongfully filled in seven of the blank cheques with the name of defts., who took them in good faith, & certain sums which he owed them from

had due notice of the matters afore-  
Replication, *de injuriâ sud*  
—*Held*: (1) the replication  
bad; (2) a special demurrer to the  
would have been allowed, as  
to the general issue.—  
v. WALKER (1849), 11  
1. L. R. 332; 1 Ir. Jur. 119.—IR.

g. —.]—In an action by the  
acceptor of a bill against the drawer &  
an indorsee, concluding for a  
of the bill, & damages, on  
that the bill had been signed blank by  
pursuer, & delivered to the drawer for  
his accommodation prior to pursuer's  
sequestration, & that the drawer had  
wrongfully filled it up & indorsed it  
after pursuer's sequestration, & that  
the indorsee had redelivered the bill to  
the drawer to enable him to

on a  
warrant which had been followed:  
d: pursuer had set forth a rele-  
case against the drawer of the

bill, but not against the indorsee, as it  
was not averred that he knew that the  
bill had been delivered blank to the  
drawer for his accommodation prior to  
the sequestration of the acceptor.—  
M'MERKIN v. RUSSELL & TUDHOPE  
3 R. (Ct. of Sess.) 587.—SCOT.

h. Onus of proof.]—  
EVE (1913), 20 R. L. N. S.  
CAN.

k. —.]—A person signed his  
name to a blank stamped paper, &  
delivered it to another to be converted  
into a bill. The latter completed the  
bill by filling in an amount which the  
stamp would cover, & dating it:—  
*Held*: the onus of showing that the  
bill had not been filled up in accord-  
ance with the authority given lay upon  
the signer.—ANDERSON v. SOMERV  
MURRAY & Co. (1898), 36 So.  
88.—SCOT.



time to time. Pltff. sued defts. for damages for the conversion of the cheques & their proceeds:—*Held*: pltff. was entitled to recover, as when the holder of a negotiable instrument was not a holder for value, the drawer of the instrument was not estopped from saying as against such holder that the body of the instrument had been wrongly filled up.—*DUNN v. DUNN & BEVAN* (1884), 13 Q. B. 257; 53 L. J. Ch. 585; 50 L. T. 1; 32 W. R. 466, C. A.

### SECT. 3.—EFFECT OF NEGOTIATION.

**589. Transferee filling in blanks—No better title than transferor.]—**A person who without inquiry takes from another an instrument signed in blank by a third person, & fills up the blanks, cannot, even in the case of a negotiable instrument, claim the benefit of being a purchaser for value without notice, so as to acquire a greater right than the person from whom he himself received the instrument.—*FRANCE v. CLARK* (1884), 26 Ch. D. 257; 53 L. J. Ch. 585; 50 L. T. 1; 32 W. R. 466, C. A.

—*Consol. Hamill v. Lilley, Lilley v. Hamill* (1886), 2 T. L. R. 596.  
*Hutchison v. Colorado United Mining Co.* (1893), 10 T. L. R. 178.

*Consol. Fox v. Martin* (1895), 64 L. J. Ch. 473. *Apud. Montagu v. Weston, Clevedon, & Portishead Light Rys. Co.* (1903), 19 T. L. R. 272. *Distd. Fry v. Smellie*, [1912] 3 K. B. 282, C. A. *Reid. Easton v. London Joint Stock Bank* (1886), 55 L. T. 678, C. A.; *Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia* (1888), 38 Ch. D. 388, C. A.; *London & Midland Bank v. Mitchell*, [1899] 2 Ch. 161; *Herdman v. Wheeler*, [1902] 1 K. B. 361; *Lloyd's Bank v. Cooke*, [1907] 1 K. B. 794, C. A. *Mentd. Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank* (1890), 39 W. R. 449, C. A.; *Moore v. North Western Bank* (1891), 64 L. T. 456; *Powell v. London & Provincial Bank*, [1893] 2 Ch. 555, C. A.; *Watkin v. Lamb* (1901), 85 L. T. 483; *Stubbs v. Slater & Bond* (1910), 102 L. T.

### PART VII. SECT. 3.

**589 i. Transferee filling in blanks—No better title than transferor.]—**Where a blank in a promissory note for the insertion of a rate of interest has not been filled in at the time it is tendered for discount, the person taking it is put upon inquiry as to the authority of the tenderer to fill in the rate, & where he has no such authority & the holder, with his consent, but without the consent of other parties, inserts a rate of interest, the holder cannot recover against such other parties.—*BANK OF BRITISH NORTH AMERICA v. ROBERTSON*, [1917] 2 W. W. R. 1110; 36 D. L. R. 166.—CAN.

**l. — Must prove himself a bond fide holder for value.]—**Where the indorser indorsed the note while in blank, there being no maker's name attached to it, nor any sum nor payee expressed in it, & it appeared that the name of the maker was afterwards signed without authority:—*Held*: the indorsee suing must show himself a bond fide holder for value.—*HANSCOME v. COTTON* (1857), 15 U. C. R. 42.—CAN.

**m. Transferee present when blank filled up—Liability to holder.]—**A party who signs & delivers a blank paper in order that it may be converted into a bill is liable for the amount of the bill into which the paper is converted, to the holder, in whose presence the conversion or filling in takes place, &, a fortiori, to a subsequent holder in due course.—*BACON v. DÉCARIE* 34 S. C. 103; 4 E. L. R.

**a holder in due course.]—**A person in whose presence a note signed in blank is filled up by a third party, to whom it was handed in its incomplete state, is put upon inquiry as to the authority to fill it up, & is not a holder in due course. If therefore, the filling up is not made within a reasonable time, or is made without authority or in excess of the authority given, he cannot recover upon the note.—*DEMEKE v. LÉVEILLÉ* (1913), Q. R. 44 S. C. 61; (1914), Q. R. 23 K. B. 346; 20 R. L. N. S. 295; 20 D. L. R. 976.—CAN.

**l. Blank note—Fraudulently or filled up—Right of holder in due course without notice to recover.]** Where debt, signed as maker a form of note, & handed it to A., by whom it was filled up for \$865, & pitfs. afterwards became indorsees of it for value without notice:—*Held*: debt. was liable, though it might have been fraudulently or improperly filled up or indorsed.—*McINNES v. MILTON* 30 U. C. R. 489.—CAN.

**p. Name of drawer in blank Filled in by holder for value—protest.]—**A. accepted a bill for accommodation of the drawer & blank in his name. The drawer delivered it for value to a third party, but omitted to insert his name, whereupon the third party inserted his own name as drawer & indorsed it. A. refused to pay the bill, & it being protested, the third party deleted his name & got the proper drawer (now bkpt.) to subscribe it as

r. London Joint Stock

**590. Blank note—Filled up for more than authorised amount—Indorsee must prove consideration.]—**If A. sign his name upon blank paper, stamped with a note stamp, & transmit it to B., with a parol authority to draw a note not exceeding a certain amount, an indorsee cannot, without proof of consideration, recover upon the note, if B. has drawn it for a larger sum, though there is no proof that the message conveying the parol authority was delivered to B.—*ROWLANDS v. EVANS* (1840), 4 Jur. 460.

### SECT. 4.—OTHER CASES.

**591. Blank acceptance—Not a "security" until filled in.]—***Held*: a bill accepted by bkpt. in blank before the granting of his certificate, & drawn & indorsed afterwards, was not a "security" within Bankruptcy Act, 1849 (c. 106), s. 202, & a bond fide holder for value might sue bkpt. on such bill.—*GOLDSMID v. HAMPTON* (1858), 5 C. B. N. S. 94; 27 L. J. C. P. 286; 31 L. T. O. N. 248; 4 Jur. N. S. 1108; 6 W. R. 768; 141 E. R. 37.

*Annotations:—Mentd. Re Christie, Ex p. Priest* (1860), 1 L. T. 450; *Reeves v. Hawkes* (1861), 6 L. T. 53; *Reed* (1862), 13 C. B. N. S. 220.

, Nos. 98 et seq., ante.

**592. — No authority to borrow money or pledge authority for money lent.]—**A blank acceptance is not in itself evidence of an authority to the party to whom it is given to borrow the amount on the credit & behalf of the acceptor, even although it is admitted on the part of the acceptor that the money to be raised on the security of the

such & specially indorse it:—*Held*: the third party was entitled to payment.—*JUMSDEN v. MARR* (1806), Hume, 55.—SCOT.

### PART VII. SECT. 4.

**q. Blank bill stamp—Amount filled in—Whether acceptor entitled to notice.]—**A party signing & delivering a blank bill is not entitled to notice of the amount for which it has been filled up.—*LYON v. BUTLER* (1841), 4 Dunl. (Ct. of Sess.) 178; 14 Sc. Jur. 67.—SCOT.

**r. Drawer's name left blank—rupture of acceptor.]—**A bill duly accepted, but blank in the name of the drawer, was found amongst the papers of bkpt. who had absconded. In an action by the trustee of his estate:—*Held*: the acceptance was effectual.—*v. Moss* (1804), 13 Fac. Coll. 382.—SCOT.

**s. —.]—**S was in use to accommodate N. by putting his name to blank bill-stamps subject to an understanding that the amount filled in should not exceed £40; N. used one of these forms to retire an of T. for £50, the form in question being converted into a draft by T. on S. & N. for £88. On N.'s bkpt., S. brought a suspension of a charge on the bill:—*Held*: the subscriber of a blank stamp is liable to the person who gives credit to the holder on the faith of it, & fills up his own name as drawer, that it was held gratuitous v. TAYLOR (1824), 21 Fac. Coll. SCOT.

## 76 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 4.—Other Cases. Part VIII. Sects. 1, 2 & 3: Sub-sects. 1*

bill was to be lent to the acceptor; & however the latter may be liable on the bill at the suit of an honest holder, the question on a claim for money lent by him to the acceptor, will be, whether the money was received by any one as the authorised agent of the acceptor in that behalf.

Deft.'s acceptance in blank would be authority to fill up the bill, but not necessarily to pledge deft.'s credit for the money received (ERLE, C.J.). —KING v. FORBES (VISCOUNTESS) (1862), 3 F. & F. 41, N. P.

No bill or debt until blank filled in.]—See Part II., Sect. 1, sub-sect. 2, *ante*,

### Part VIII.—Delivery.

See 1882 Act, ss. 21, 84.

#### SECT. 1.—ISSUE OF INSTRUMENT.

See 1882 Act, s. 2.

**593. Presumption as to date of issue.]**—In the absence of evidence to the contrary, a bill of exchange must be taken to have been issued at the time it bears date.—ANDERSON v. WESTON (1840), 6 Bing. N. C. 296; 8 Scott, 583; 9 L. J. C. P. 194; 4 Jur. 105; 133 E. R. 117.

—*Consd.* Potez v. Glossop (1848), 2 Exch. 191. *Appld.* Angell v. Worsley (1849), 12 L. T. O. S. 428. *Consd.* Morgan v. Whitmore (1851), 6 Exch. 716; Roberts v. Bethell (1852), 22 L. J. C. P. 69; Butler v. Mountgarret (1859), 7 H. L. Cas. 633. *Reid.* Davies v. Lowndes (1843), 6 Man. & G. 471.

**594. Note—Delivery to third person—In presence of payee.]**—One having made & assigned a promissory note, handed it to a third person, the payee being present, but before it was given to the payee it was altered, by the consent of all parties:—*Held*: such giving it to the third person was not an issuing of it.—SHERRINGTON v. JERMYN (1828), 3 C. & P. 374, N. P.

**595. Bill—Completed after act of bankruptcy.]**—An acceptance was written on an incomplete bill of exchange, to which no drawer's name was affixed. The acceptor soon afterwards assigned all his property for the benefit of his creditors. Some weeks afterwards the bill, which had remained in the hands of the acceptor's agent, was completed & indorsed to a *bona fide* holder for value, who, on its being dishonoured, obtained an adjudication in bkpcy. against the acceptor, grounded on the assignment as an act of bkpcy.:—*Held*: the adjudication must be reversed, as no debt existed on the bill till it was issued, which was after the act of bkpcy.—*Re* HAYWARD, *Ex p.*

HAYWARD (1871), 6 Ch. App. 546; 40 L. J. Bcy. 49; 24 L. T. 782; 19 W. R. 833, L. JJ.

*Annotations*:—*Mentd.* *Re* Foulds, *Ex p.* Learoyd (1878), 10 Ch. D. 3; Faulks v. Atkins (1893), 10 T. L. R. 178; Moore, Bartholomew's Case (1899), 68 L. J. Ch. 302.

**596. Cheque—Delivery to clerk—Whether taking as holder.]**—A clerk in the account department of applts. by fraudulently representing to them that work had been done on their account by B., induced them to draw cheques payable to the order of B. in payment for the pretended work. There was in fact no such person as B. The cheques when signed by applts. were sent by them to the account department for postage. The clerk obtained possession of the cheques, indorsed them in B.'s name, & negotiated them with respts., who gave value for them in good faith. The cheques were paid to respts. by applts.' bankers. Applts. having discovered the fraud brought an action against respts. to recover the amount of the cheques as money paid under a mistake of fact:—*Held*: the cheques were "issued" within 1882 Act, s. 2.—CLUTTON v. ATTENBOROUGH & SONS, [1897] A. C. 90; 66 L. J. Q. B. 221; 75 L. T. 556; 45 W. R. 276; 13 T. L. R. 114, H. L.

*Annotations*:—*Distd.* Vinden v. Hughes, [1905] 1 K. B. 795. *Consd.* Macbeth v. North & South Wales Bank, [1908] 1 K. B. 13. *Distd.* North & South Wales Bank v. Macbeth, North & South Wales Bank v. Irvine, [1908] A. C. 137.

Accommodation bill.]—See Part X., Sect. 3, *post*.

#### SECT. 2.—NECESSITY FOR DELIVERY.

See 1882 Act, ss. 2, 21 (1) (3).

To complete acceptance.]—See Part VI., Sect. 3, sub-sect. 4, *ante*.

To complete indorsement.]—See Part XI., Sect. 15, sub-sect. 3, B., *post*.

*t. Blank note—No authority to renew.]*—A. signed a note in blank, & gave it to B. "to be used as he liked." He filled it up for \$1,200, signed it, & it to pltf., who was not made of the circumstances in it had been signed. It was twice without A.'s name, the note remaining in pltf.'s hands: *Held*: the authority to B. as to using the note did not extend to keeping it afloat after maturity without A.'s knowledge.—DEVANNEY v. BROWNLEE (1883), 8 A. R. 335.—CAN.

#### PART VIII. SECT. 1.

*a. What constitutes.]*—A stamped acceptance bearing only the signature & address of the acceptor, the words, "4 months after date," & a sum which the stamp covered, written in figures on the left hand, was dated, filled up, signed, & discounted by a person to whom it was sent as drawer:—*Held*: proviso in Mercantile Law ment Act, s. 19, rendering summary diligence incompetent on bills "issued without a date" did not apply, the

bill not being "issued" until completed by the drawer.—CAMERON v. MORRISON (1869), 7 Macph. (Cl. of Sess.) 382; 41 Sc. Jur. 221.—SCOT.

*b. Necessity for.]*—Issue intending it to be used, of a cheque signed by the drawer & complete in form, is an essential element in the liability of the drawer to one who afterwards cashes it.—MCKENTY v. VANHOENACK (1911), 21 Man. L. R. 360; 19 W. L. R. 184.—CAN.



**597. By drawer — Cheque.]** — A cheque, though signed, is not a complete cheque until delivered. Until then there is no property in it belonging to the person in whose name it is drawn.—*Ex p. REECE* (1851), 16 L. T. O. S. 501, L. C.

### SECT. 3.—CONDITIONAL DELIVERY.

See 1882 Act, s. 21 (2) (b).

As regards blank instruments, see Part VII., ante.

#### SUB-SECT. 1.—DELIVERY IN ESCROW.

**598. Admissibility of evidence.]**—In an action upon a promissory note brought by the payee, the ct. let deft. in, to show that it was delivered in the nature of an escrow, viz., as a reward, in case he procured deft. to be restored to an office, which it being proved he did not effect, there was a verdict for deft.—*JEFFERIES v. AUSTIN* (1725), 1 Stra. 674; 93 E. R. 774.

*Annotation:—Reid. Munroe v. Bordier* (1849), 8 C. B. 862.

**599. Possession of premises to be delivered to one of several makers of note.]**—In an action by payee against makers of a promissory note, it appeared that it had been given on an agreement by one of them to buy crops, etc., from an outgoing tenant. The note when made was handed

to a third person to be attested by him, & paid over to pltf. on condition that possession of the premises should be given up to one of defts. the next morning, but that pltf. was to hold the premises for 3 or 4 weeks, paying 1s. a week rent. There was evidence of a verbal refusal by pltf. on the next morning to give up possession, but deft.'s cattle were seen on the land on that day & remained there. Possession of the house was not obtained till 3 weeks after. The note when produced did not appear to have been attested, & there was no evidence how pltf. had got possession of it: *Held*: as no act was shown to have been done by pltf. to keep possession of the land, the jury might rightly conclude that possession had been delivered up according to the condition, & the misconduct of the bailee of the note in withholding

*MORGAN* (1832), 2 Cr. & J. 453; 2 Tyr. 396; 140 E. R. 192.

*Annotation:—Mentd. Shedden v. A.G.* (1860), L. J. P. M. & A. 217.

#### SUB-SECT. 2.—DELIVERY FOR SPECIAL PURPOSE.

See 1882 Act, s. 21 (2) (b).

**600. Bill to be discounted.]**—A. being a creditor of B. & having deeds in his possession as a security for the debt received a bill indorsed by B. for the

### PART VIII. SECT. 2.

**597 i. By drawer — Cheque.]**—Delivery, intending it to be used, of a cheque payable to A. B. or bearer, although signed by the drawer & complete in form, is an essential liability of the drawer to one who afterwards cashes it.—*McKENTY v. VANHOREN-BACK* (1911), 21 Man. L. R. 360; 19 W. L. R. 184.—CAN.

**c. By maker — Note.]**—Action against deft. as maker of a promissory note. Before deft.'s signature was, as alleged, the word "per," & underneath was the name "W. S., manager." The alleged note was brought to deft. by pltf. for the purpose of execution by a co., when deft., who was the secretary of the co., signed it, the intention being that the co.'s name should be filled in over deft.'s by the co.'s manager, by stamping it with deft.'s stamp; this was not done. After the note became due, pltf. proved on it against the co. who had gone into insolvency, & obtained a dividend:—*Held*: the instrument had never been perfected or delivered as a promissory note & deft. was not liable.—*BROWN v. HOWLAND* (1887), 9 O. R. 48; 15 A. R. 750.—CAN.

**d. — — —.]**—The making of a promissory note is altogether the act of the maker, & delivery to the promisee is requisite to render it complete.—*WINTER v. ROUND* (1863), 1 Mad. 202.—IND.

#### PART VIII. SECT. 3, SUB-SECT. 1.

**598 i. Admissibility of evidence.]**—On the hearing of an action upon a dishonoured promissory note, against the maker, deft. tendered evidence to show that the note had been delivered by him to pltf. upon a verbal agreement, that deft. should not be called upon to pay it until certain bills of a third party, held by deft.

should be paid:—*Held*: the evidence was admissible for the purpose of showing that the note was delivered upon a condition, upon non-fulfilment of which it had not become operative.—*GOLDNER v. MARSHALL* (1913), 15 W. A. L. R. 50.—AUS.

**e. Undertaking not to part with note—Until composition deed assented to.]**—While the money arising from a sale under execution against B. remained with the sheriff, it was agreed by deed that A. the execution creditor should relinquish the fruits of his execution, & should receive a composition on his claim, along with the other creditors of B. It was also agreed that A. might have the use of the money arising from the execution, on passing his note at 4 months for the amount to C., as a trustee for the creditors. A., on signing the deed, deposited his note with C.'s solr., receiving from him, at the same time, a written undertaking not to part therewith until all the creditors of B. had executed or assented to the deed. No creditor except A. signed the deed, which did not appear to have been further acted upon:—*Held*: an action was not maintainable on the note, the note having been deposited by A. in the hands of a third party, to be handed to C. only in a certain event, which had never happened.—*SMITH v.* (1849), 1 Ir. Jur. 236.—IR.

**f. Bill to be held until payment of a debt—Defence—Questions for jury.]**—G. got a bill of exchange from H. as security for money lent, & an arrangement was effected between them, that, till the debt was paid, the bill should be deposited with P., H.'s solr. G. sent the bill to P. in the following letter: "Mar. 22. In pursuance of an arrangement between H. & myself, I send you bill of exchange, drawn by H., & accepted by his indorsee, until H. pays me £25, out

of a sum due to H., & when the same is paid, to hand over the bill to H."

In an action by G. for detinue of the bill against P., the judge left it to the jury to infer that P. from his position as H.'s solr. had knowledge of the arrangement between G. & H.; & the jury found for pltf.:—*Held*: it was properly left to the jury to draw the inference they did; if deft. did not learn of the arrangement from H. himself, it was nevertheless to his interest to ascertain what the whole was & it was his duty to

to H. to ascertain what it was.  
*v. POWELL* (1861), 13 Ir. Jur. 399.—IR.

**g. Liability to arise in certain event only.]**—*Held*: as the event, upon which liability upon notes was to arise, did not happen the notes must be declared cancelled.—*BURTON v. CUNDLE* (1918), 14 O. W. N. 306.—CAN.

**h. Surety signing on condition of signature by co-surety.]**—Where a person signs a note as surety on condition that it is not to be used until a surety has signed it, any person having knowledge of that condition, discounts the note without first obtaining such signature, holds it freed from any liability on the part of the surety who did sign it.—*RIPLEY v. VELLIE* (1915), 32 W. L. R. 184; 8 W. W. R. 764.—CAN.

#### PART VIII. SECT. 3, SUB-SECT. 2.

**k. Cheque to be applied in particular way.]**—A party receiving a cheque to be applied in a particular way, cannot afterwards apply it otherwise, even although he may not have given a receipt.—*CANADA POWDER CO. v. BURLEY* (1860), 9 C. P. 290.—CAN.

for special purpose bank cannot deal with a promissory note placed in its hands



**Sect. 3.—Conditional delivery: Sub-sect. 2. Sect. 4: Sub-sect. 1**

purpose of getting it discounted:—*Held*: he could not appropriate the bill & maintain an action upon it against the acceptor.—*DELAUNEY v. MITCHELL* (1816), 1 Stark. 439, N. P.

*Annotation*:—*Mentd. Wright v. Willcox* (1850), 9 C. B. 650.

**601. — Accommodation bill.**—The acceptor of an accommodation bill having delivered it to A. for a special purpose, & the latter without performing his trust, having quitted the country after committing an act of bkpcy., was pursued by a creditor, who obtained the bill from him in ignorance of his bkpcy. & of the circumstances in which the bill was accepted:—*Held*: the acceptor was not liable upon the bill at the suit of the creditor who had so possessed himself of it.—*SMITH v. DE WITTS* (1825), 6 Dow. & Ry. K. B.

**602. — — — — —**—J. S. drew a bill on deft. (which the latter accepted for the accommodation of the former) & indorsed it to pltf. as his agent, in which character pltf. paid it away, on account of the drawer, for wine contracted to be purchased for him. Subsequently, the wine contract being rescinded, the holder of the bill refused to give it up, until he had been paid £150 which he alleged to be due to him from the drawer. Pltf. engaged to pay it, received the bill, & sued deft. as the acceptor:—*Held*: he was not entitled to recover, although it was insisted that he had a lien on it to the amount he had promised to pay the holder on its being delivered up to him.—*HALLERT v. DEWIS* (1827), 1 Moo. & P. 78; 6 L. J. O. S. C. P. 32.

**603. — To meet acceptances—Bill discounted in breach of agreement.**—By the terms of an agreement between F. & Co. & their bankers, S. & Co., the permission to discount indorsed bills of exchange was limited to the amount, necessary to meet such acceptances of F. & Co. as were in

for a special purpose, in any other way: nor can the bank claim a lien thereon, either by contract or by implication of law.—*KUHNE v. AFRICAN BANKING CORPN.* (1910), E. D. L. 443.—S. AF.

*in respect of a certain period—Wf applicable to similar claims for another period.*—Deft. gave promissory notes for the accommodation of P. to enable him, by indorsing them to pltf., to satisfy the claims of a certain concern for the year 1901:—*Held*: the security was given on a limited condition & could not be applied to discharging debts incurred to the same concern in another year.—*MURPHY v. MURPHY* (1907), 9 O. W. R.

**B. — — — — —** *Wf* *to note.*—An agreement between the maker & payee of a promissory note that it shall only be used for a particular purpose, constitutes an equity which, if the note is used in violation of that agreement, attaches to it in the hands of a bona fide holder for value who takes it after dishonour.—*MACARTHUR v. MACDOWALL* (1893), 23 S. C. R. 571.—CAN.

— a travelling agent for pltf. arranged with deft. to raise \$1,000 to purchase an interest in the latter's business. Deft. in order to enable S. to raise said money from pltf. indorsed promissory notes made by S. in favour of pltf. S. sent the

notes to pltf. who asserted that they were sent to apply to S.'s debt:—*Held*: the notes in the first instance were given for a limited purpose of which pltf. had knowledge & they could not recover.—*STIRTON v. HARVEY* (1908), 8 W. L. R. 185.—CAN.

**600 I. Note to be benefit of maker—Discounted by indorsee after maturity.**—A note indorsed generally was put into the hands of A. to get it discounted for the maker, B. his debtor. A. discounted it for his own benefit instead, after maturity. In an action by indorsee against maker & indorser:—*Held*: pltf. could not recover.—*KUHN v. STRAAT* (1851), 8 U. C. R. 82.—CAN.

**P. Bill given to take up other bills.**—A., a foreign correspondent of B., sent him a bill drawn by A. upon B. indorsed to C., with instructions to accept it & give it to C. in exchange for an equal amount of free bills maturing in C.'s hands. B. handed the bill unaccepted to C., with a written memorandum of the condition. C. indorsed it to D. for value, informing him of the conditions & communicating the memorandum. D. sent the bill to B. for acceptance, which he refused, & retained the bill. D. brought action for delivery of the bill:—*Held*: B. was entitled to retain it.—*MARRINI & CO. v. STARK & CRAIG* (1878), 6 R. (Cl. of

for safe

the course of immediate payment at the house of S. & Co. To cover certain acceptances becoming due, F. & Co. remitted to S. & Co. an indorsed bill of exchange, but the acceptances were dishonoured by S. & Co., who soon afterwards stopped payment. S. & Co. then procured the bill to be accepted, & made an entry in their books of their having discounted it. A commission having issued against S. & Co.:—*Held*: S. & Co. had no right to discount the bill without executing the trust reposed in them, & their assignees were bound to deliver up the bill to F. & Co.—*Re SIKES & CO., Ex p. FRERE* (1829), Mont. & M. 263, L. C. *Annotation*:—*Reid. Jombart v. Woollett* (1837), 2 My. & Cr. 389.

**604. — Bill indorsed by transferee.**—A bill was drawn by A. & accepted by B. for the purpose of being discounted & having the proceeds applied in the payment of other bills accepted by B., but the other bills, before they became due, were paid by B., who directed A. to hold the first-mentioned bill for his, B.'s use, & not to part with it without his authority. A., for his own purposes, indorsed it to C. for a valuable consideration, having first informed the latter that it belonged to B., & that he, A., had no authority to part with it:—*Held*: the property in the bill was in B., the acceptor, & he might, in the circumstances, maintain trover for the bill against C.—*EVANS v. KYMER* (1830), 1 B. & Ad. 528; 9 L. J. O. S. K. B. 92; 109 E. R. 883.

**605. — — — — —** *Part payment to transferor—Liability of discount for balance.*—Where the holder of a bill of exchange gave it to a friend to procure it to be discounted, & the friend, at the request of the discount, indorsed the bill:—*Held*: the holder having received but a part of the amount, & having been called upon to pay the whole bill at maturity, was entitled to sue the discount for the balance, the only questions for the consideration of the jury being, whether the bill belonged to the original holder or his friend, &

Deft. pleaded that he made & pltf. received the note from him, on the terms that pltf. should take care of it for him, & should not negotiate or with it to any other person:—*Held*: a good defence.—*WISMER v.* (1863), 22 U. C. R. 446.—CAN.

**F. — — — — —** *after maturity.*—In an action by indorsee against the maker of a note payable to J., & by him indorsed to G., & by G. to pltf., deft. pleaded, that J. indorsed the note to G. for safe keeping only, & not to be negotiated, & G. so received it, but after it fell due, & without J.'s authority, he indorsed it to pltf., who then had notice of the premises, & that while J. held it, & after it fell due, he, for value, gave time to deft. for payment until a day after the commencement of the suit:—*Held*: after verdict, a good plea.—*BARTON v. FISHER* (1867).

**a. — — — — —** *To maker of note.* *Violation in breach of it.* Where a person signs a promissory note for accommodation of the maker & entrusts the custody thereof to the maker, a bona fide holder who acquires the said note from the latter obtains thereby an incontestable title thereto & property therein, although in parting with it the maker acts without authority or in breach of express instructions.—*NORTHERN ELECTRIC & MFG. CO. v. KANOW ELECTRIC & SEABORN* (1914), 29 W. L. R. 582.—CAN.

whether there was any defence for the discount against the friend who had indorsed it.—**BASTABLE v. POOLE** (1834), 1 Cr. M. & R. 410; 5 Tyr. 111; 4 L. J. Ex. 25; 149 E. R. 1139.

*Annotation*:—**Conad. Muttilloll Seal v. Dent** (1853), 5 Moo. Ind. App. 328.

**606. — Blank indorsement—Bill misappropriated by transferee.**—Indorsee against drawer of a bill of exchange. Plea, that deft.'s indorsement was in blank, that deft. delivered the bill to A., not a party to the bill, only to get it discounted for him, that A. fraudulently, & in violation of that special purpose, delivered it to B. to secure a debt due from A. to B., of all which pltf. had notice:—*Held*: the plea was bad, for not showing distinctly that deft. never had value for the bill. *Semble*: the replication to such plea, "that deft. broke his promise without the cause alleged by him in his plea," was good.—**NOEL v. RICH** (1835), 2 Cr. M. & R. 360; 4 Dowl. 228; 1 Gale, 225; 5 Tyr. 632; 5 L. J. Ex. 70; 150 E. R. 155.

*Annotations*:—**Folld. Isaac v. Farrar** (1836), 1 M. & W. 65. **Conad. Curtis v. Headfort** (1837), 1 Jur. 738. *Reid. Noel v. Boyd* (1835), 4 Dowl. 415; **Watson v. Wilks** (1836), 2 Har. & W. 187; **Humphreys v. O'Connell** (1841), 7 M. & W. 370; **Cowper v. Garbett** (1844), 13 L. J. Ex. 354.

**607. — No consideration.**—To an action on a bill of exchange for £50, drawn by M. upon & accepted by deft., & by M. indorsed to pltf., deft. pleaded that the bill was drawn by M. & accepted by deft., & indorsed by M. to pltf., & pltf. first held same for the special purpose of getting same discounted & to hand the proceeds thereof to deft., that pltf., acting in fraudulent collusion with M., got the bill discounted, & contrary to & in violation of the special purpose for which the bill was drawn, accepted, & indorsed, & for which pltf. first held same, handed to deft. £17 & no more, being part of the proceeds thereof, & that there never was any other consideration for the acceptance by him of the bill, or for pltf. being the holder thereof:—*Held*: the plea, though informal, was good in substance, since it confessed a *prima facie* title in pltf. by indorsement, & avoided it by showing that he was the holder of the bill for a special purpose only, & without consideration.—**DOBIE v. LARKAN** (1855), 10 Exch. 776; 3 W. R. 247; 156 E. R. 654.

*See, further*, No. 25, *ante*; Part XI., Sect. 11, *post*.

**608. Cheque given as security—Payment subject to agreed condition.**—To an action on a banker's cheque, deft. pleaded, that it was given as a security for the payment of certain legacies claimed

*t. To be applied to specified liability—Misapplication.*—Appita. made their cheque payable to order of resps., intending that it should be applied as a deposit on account of a purchase of material which they wished to obtain from resps. through the intervention of A. They handed the cheque to A., for this special purpose, & the word "deposit" appeared on the face of the cheque. Resps. indorsed & used the cheque, & applied the amount on an old claim which they had against A.:—*Held*: resps. were accountable to appita.—**LEIR v. MONTREAL STREET RY. CO.** (1896), 1 Q. R. 9 Q. B. 518.—CAN.

*a. Whether note given as security or to be discounted.*—Defts., shareholders of a co. which carried on business with money borrowed from pltf. bank, agreed to indorse notes to be made by the co. on the guarantee

of the other shareholders of the co. One such note given in substitution of other notes under discount had the words "en garantie, etc." in the left margin but so faint as to be only legible with difficulty. Pltf. discounted this note & surrendered the notes under discount. On the co. stopping payment & defts. being sued on the note, they contended that the intention was that the note should be kept at the bank & not used as discountable paper & that they were discharged from liability by the discounting of the note in spite of the words "en garantie, etc.":—*Held*: the presumption was in favour of negotiability against all persons who have become parties to an instrument belonging to a class generally negotiable; the present note was given & indorsed with the very object of being passed on to pltf.; the paper sued on being an uncondi-

to be due from him, as exor. of R., to pltf., & other persons, & that it was agreed that pltf. should receive the money mentioned in it, subject to the condition that the other legatees should authorise him to receive the same:—*Semble*: the agreement was to be considered as a condition precedent to the payment of the cheque, & the plea was an answer to the action.—**SPINCKE v. SPINCKE** (1841), 2 Man. & G. 295; **Drinkwater**, 102; 2 Scott, N. R. 520; 10 L. J. C. P. 122; 5 Jur. 100; 133 E. R. 758.

**609. Bill to be collected.**—A. entrusted to the English branch of an Australian bank, for collection in Australia, a bill of exchange. The bill was paid in Australia, & the proceeds were, together with other money, despatched to England. Before they were received & paid to A. the bank stopped payment:—*Held*: the bank were not debtors of, but agents for A., & trustees of the proceeds of the bill for him.—*Re* **COMMERCIAL BANK OF SOUTH AUSTRALIA**, [1887] W. N. 44.

**610. Admissibility of evidence of—From drawer to first indorsee—In action by drawer against acceptor.**—In an action against the acceptor of a bill of exchange indorsed by A., the drawer & payee, to B., B. to C., & C. to pltf., who appears to be a *bona fide* holder, deft., on a plea that A. did not indorse to B., cannot offer evidence that A. delivered the bill to B. for a specific purpose, & not to be negotiated, & that B. fraudulently negotiated it.—**HAYES v. CAULFIELD** (1843), 5 Q. B. 81; 1 L. T. O. S. 336; 114 E. R. 1179.

*Annotations*:—*Reid. Robinson v. Little* (1848), 12 L. T. O. S. 291; **Bank of Bengal v. Macleod** (1849), 5 Moo. Ind. App. 1.

#### SECT. 4.—AGREEMENTS AND CONDITIONS AFFECTING DELIVERY AND NEGOTIATION.

As regards blank instruments, *see* Part VII., *ante*.

Agreements & conditions affecting acceptance, *see* Part VI., Sects. 5, 7, *ante*.

Agreements to treat one of two makers as surety only, *see* Part XIV., Sect. 12, sub-sect. 1, *post*.

#### SUB-SECT. 1.—CONTEMPORANEOUS AGREEMENTS AND CONDITIONS.

##### A. Oral Agreements and Conditions.

**611. To introduce condition.**—If a cheque is given on a verbal condition, which the drawer

tionally worded instrument though to be put to a restricted use was none the less negotiable & the insertion of the words "en garantie, etc." did not make it non-negotiable; & pltf. had a good title to it & defts. were liable.—**LEMAIRE v. LA BANQUE NATIONALE** (1916), Q. R. 25 K. B. 259.—CAN.

#### PART VIII. SECT. 4, SUB-SECT. 1.—A.

*b. General rule.*—The terms of a note cannot be varied by parol

14 C. P. 538.—CAN.

*c. —*—Parol evidence is inadmissible to establish an obligation different from that expressed on the face of the note.—**HAMILTON v. J** (1896), Q. R. 10 S. C. 496.—CAN.

**611 i. To introduce**  
an action on a promissory note, by the



# 80 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

## Sect. 4.—Agreements and conditions affecting delivery

finds is to be broken or eluded, he has a right to stop the payment of the cheque.—WIENHOLT v. SPITTA (1818), 3 Camp. 376, N. P.

612. —.]—In an action on a promissory note the maker undertaking by such note to pay on demand, cannot adduce evidence to show a liability on a contingency only.—RAWSON v. WALKER (1816), 1 Stark. 361, N. P.

Annotations:—*Folld.* Ridout v. Briston (1830), 1 Cr. & J. 231; Foster v. Jolly (1835), 1 Cr. M. & R. 703. *Distd.* Brown v. Langley (1842), 12 L. J. C. P. 62. *Expld.* Kearns v. Durell (1848), 18 L. J. C. P. 28. *Reid.* Abbot v. Hendricks (1840), 2 Scott, N. R. 183. *Mentd.* Re Govett & Leigh, *Ex p.* Morley (1832), 2 Deac. & Ch. 50; Solly v. Hinds (1834), 4 Tyr. 305; Spartall v. Bonecke (1850), 10 C. B. 212.

613. —.]—Where a note was given, payable 14 days after date:—*Held*: oral evidence was inadmissible to prove that the note was not to be enforced, if a verdict were obtained in a suit between other parties for the actual subject-matter of the consideration.—FOSTER v. JOLLY (1835), 1 Cr. M. & R. 703; 5 Tyr. 239; 4 L. J. Ex. 65; 140 E. R. 1263; *sub nom.* FORSTER v. SIBLEY, 1 Gale, 10.

Annotations:—*Distd.* Brown v. Langley (1842), 12 L. J. C. P. 62. *Folld.* Nichols v. Barrett (1854), 23 L. T. O. S. 114; Abrey v. Crux (1869), L. R. 5 C. P. 37. *Apprvd.* New London Credit Syndicate v. Neale (1898), 67 L. J. Q. B. 825. *Reid.* Adams v. Wordley (1836), Tyr. & Gr. 820; Abbot v. Hendricks (1840), 2 Scott, N. R. 183; Young v. Austen (1869), 38 L. J. C. P. 233. *Mentd.* Catterall v. Kenyon (1842), 3 Q. B. 310; Smithurst v. Taylor (1843), 1 Dow. & L. 375; Spartall v. Bonecke (1850), 10 C. B.

payee against the maker, deft. cannot set up the defence that it was given conditionally, to secure pltf. against loss from depreciation of certain stock & that the condition never arose.—VINEBERG v. JONKA (1912), 19 R. L. N. S. 128; Q. R. 22 K. B. 128.—CAN.

611 ii. —.]—Parol evidence is not admissible to show an agreement that the liability as it appears on the face of a bill is contingent on the happening of some event.—WILTON v. MANITOBA OIL CO. (1915), W. L. R. 485; 9 W. W. R. 302; 1 D. L. R. 243; 25 Man. L. R. 623.—CAN.

iii. —.]—Pltf. sold a mare to for \$140 in part payment of which he accepted an order drawn by deft. on G., for \$80. In an action by pltf. on the original cause of action, his evidence was: "the order was not taken as a payment. I said I'd take it, & try & get it, if so, well & good; if not, I must have my money";—*Held*: the effect of this evidence being to vary the note, & control its operation, it was improperly received.—INGLIS v. ALLEN (1867), 7 N. S. R. 101.—CAN.

611 iv. —.]—Where a promissory note is drawn absolutely on its face evidence will not be received to vary its terms in the absence of evidence to show that it was given on a condition, or as an escrow, or that it was only to be treated as a note in a certain event.—MCNEIL v. CULLEN (1904), 37 N. S. R. 13.—CAN.

611 v. —.]—Deft. made a promissory note in favour of pltf. for part of the consideration money mentioned in a deed of land, from pltf. & wife to deft. Pltf.'s witness testified that it was agreed between the parties that the deed was to be left at the house of a justice, for the purpose of

212; Dunmore v. Tarleton (1853), 1 C. L. R. 19; National Assoc. Assocn. v. Stoy (1863), 11 W. R. 959; Henry v. Smith (1895), 39 Sol. Jo. 559.

614. —.]—It is not competent to the maker of a promissory note, in an action by the payee, to give in evidence an oral agreement to vary or contradict the express contract upon the face of the note.—BROWN v. LANGLEY (1842), 4 Man. & G. 466; 5 Scott, N. R. 249; 12 L. J. C. P. 62; 134 E. R. 192.

Annotations:—*Reid.* Webb v. Salmon, Webb v. Spicer (1849), 14 L. T. O. S. 86. *Mentd.* Rayner v. Fussey (1859), 28 L. J. Ex. 132.

615. — Payment not to be demanded if no balance due from defendant.]—To a count against the maker of a promissory note, payable on demand, deft. pleaded that there were certain accounts between pltf. & deft., upon which pltf. alleged that a balance was due to him, that thereupon deft., at the request of pltf., & on the faith of such allegation, made & delivered to pltf. the note, for & on account of the alleged balance, that the note was made & delivered to pltf. on the condition that he should not demand payment thereof unless it should appear that such balance was due, that, at the time of the making of the note, there was not any balance or sum of money whatever due from deft. to pltf., nor was deft. then indebted to pltf. in any sum of money whatever, & so deft. said that, except as aforesaid, there never was any value or consideration whatever for the making of the note:—*Held*: the agreement did not negative the absolute contract stated in the note, & it was not necessary that

the wife examined separate & apart from her husband, as to her release of dower, & that the note was not to be recoverable until such examination & certificate were made. The wife refused to go before a justice & acknowledge a release of dower:—*Held*: no parol evidence of an agreement to vary the terms of the note should have been received.—GRAHAM v. GRAHAM (1877), 2 R. & C. 265.—CAN.

611 vi. —.]—*Assumpsit* on a note for £50 by payee against makers. Plea, that defts. were in partnership, & it was agreed that they should admit pltf. into their firm on his advancing £1,000; that defts. in part performance caused alterations to be made in their store, & pltf. afterwards became proprietor of same, & advanced £50 on account thereof; & to assist defts. in making such alterations, & for securing same to pltf., defts., on the understanding that said note was to form part of the consideration money for accepting pltf. as a partner, signed said note for the accommodation of pltf., & had always been ready to receive pltf. as a partner on his paying the balance of said money; but pltf. had always refused to pay such balance, or become a partner, or pay for the alterations made in consequence of the agreement:—*Held*: the plea was bad, as setting up a parol agreement at variance with the note.—ADAMS v. FORDE (1856), 13 U. C. R. 485.—CAN.

611 vii. —.]—No right of action can be founded upon a collateral oral agreement qualifying the engagement to pay contained in a bill of exchange or promissory note.—CORNISH v. BANK OF NEW SOUTH WALES, Mac.

d. — To be subject to — of freight.]—In an action on a

note, defts. pleaded set-off for money due on a note made by pltf., for freight due to defts. The note was not made & delivered for a special purpose as respected the whole amount of it, but upon a concurrent understanding (not in writing) that it was to be subject to the contingency of a future adjustment of the freight in reduction of the amount to an extent disputed & uncertain at the time it was given:—*Held*: the verdict for pltf. should be set aside, & a new trial granted.—MELLISH v. WILKES (1855), 4 C. P. 407.—CAN.

e. — Promise to pay commission.]—Pltf.'s testator, on the sale of his property to a syndicate, of which deft. was a member, promised to pay him \$1,800 commission. On closing the purchase, deft. handed deceased a cheque for \$1,800, at the same time asking deceased to indorse it back to him. Deceased failed to return the cheque, of which, deft., becoming suspicious, stopped payment. In an action for the amount of the cheque:—*Held*: parol evidence was admissible to prove the agreement by deceased to pay the \$1,800, since it was not evidence to contradict or vary any written document.—BENSON v. HUTCHINGS (1913), 24 W. L. R. 782; 4 W. W. R. 907.—CAN.

as security only —Pending settlement of accounts.]—The maker of a note payable to A. or bearer pleaded an agreement with A. when the note was made, that it should be held by A. as a security for the settlement of their future accounts, & that on settlement A. was largely indebted to deft. In an action by the holder against the maker:—*Held*: bad, as showing an agreement contrary to the note.—HARVEY v. (1844), 1 U. C. R. 483.—CAN.



the plea should allege that the agreement not to enforce the note, if no debt were due, was in writing.—**KEARNS v. DURELL** (1848), 6 C. B. 596; 18 L. J. C. P. 28; 13 Jur. 153; 136 E. R. 1382.

*Annotation*.—**Reid. Young v. Austen** (1869), L. R. 4 C. P. 553.

#### 616. — Bills to be given up to drawer.

In an action by indorsee against acceptor of a bill of exchange, deft., under a traverse of the indorsement, may prove that the drawer wrote his name on the bill, & delivered it to pltf., upon condition of certain other bills being given up to the drawer, & that the condition had not been complied with.—**BELL v. INGESTRE (LORD)** (1848), 12 Q. B. 317; 19 L. J. Q. B. 71; 11 L. T. O. S. 200; 116 E. R. 888.

*Annotations*.—**Distd. Law v. Parnell** (1859), 7 C. B. N. S. 282. **Reid. Dawson v. Isle**, [1906] 1 Ch. 633.

617. —.]—Action upon a promissory note for £20, given by deft. to pltf., payable 1 month after date. Plea, that when the note was made, there was an agreement between pltf. & deft. to bring out a book in partnership, & that pltf. placed £20 in deft.'s hands, for the purpose of effecting that object, that the note was given by the deft. as an acknowledgment of the receipt of the £20, & was not to be negotiated, but to be allowed for in the partnership accounts:—**Held**: the plea was bad.—**NICHOLS v. BARRETT** (1854), 23 L. T. O. S. 114.

618. — Redelivery of warrants.]—Declaration on a promissory note. Plea, that the note

was given with certain wine warrants as security for the repayment of a loan, & that it was expressly agreed that, on repayment of the money due, the wine warrants should be redelivered to deft. Averment, that deft. was always ready to repay, & offered to repay the money due on redelivery of the warrants, but that pltf. had always refused to redeliver same:—**Held**: a bad plea. **NATIONAL ASSURANCE ASSOCN. v. STOKY** (1863), 2 New Rep. 391; 11 W. R. 959.

619. —.]—In an action on a bill of exchange by the payee against the drawer for default of payment, evidence of a parol agreement was offered to show that at the time deft. drew the bill, the acceptor deposited with pltf. certain securities, which pltf. agreed to realise in the event of the acceptor dishonouring the bill before he sued deft. on the bill:—**Held**: the parol agreement was inadmissible to vary the contract on the bill.—**ABREY v. CRUX** (1869), L. R. 5 C. P. 37; 39 L. J. C. P. 9; 21 L. T. 327; 18 W. R. 63.

*Annotations*.—**Consd. Stott v. Fairlamb** (1883), 52 L. J. Q. B. 420. **Fold. New London Credit Syndicate v. Neale**, [1898] 2 Q. B. 487; **Hitchings & Coulthurst Co. v. Northern Co. of America & Doushkeas**, [1914] 3 K. B. 907.

#### 620. — Drawer not to be liable on bill.

To an action by the holder of a bill of exchange against the drawer as indorser, the defence was that at the time the bill was drawn, the drawer's name written on the back & the bill handed over to pltf., it was arranged between pltf. & the drawer that the latter should not be in any way held liable on the bill:—**Held**: it was for the

be discharged—*Otherwise than by payment.*]—It is a good defence to an action by the personal representatives of the payee against the maker of a promissory note that at the time of its making an oral agreement was entered into between the payee & the maker, that if the latter would pay interest on the note, & although not liable so to do, would support for life a relative of the former, the note should be considered paid; & evidence to the above effect was held admissible in an action on the note brought after complete performance of the agreement by deft.—**MCQUARRIE v. BRAND** (1896), 28 O. R. 69.—**CAN.**

h. — Drawer to receive indemnity.]—In an action upon a cheque by an indorsee, defender, the drawer, proved by parole that he had granted it subject to a condition that on the day of granting he should receive the cheque of a third party to cover his liability, & that he had stopped payment in consequence of this condition not having been fulfilled:—**Held**: it was competent to prove by parole that the cheque had been granted subject to the condition; & that pursuer was affected by the condition on which the cheque had been granted.—**SMITH v. KYLE** (1902), 39 Sc. L. R. 304; 9 S. L. T. 364.—**SCOT.**

620 i. — Drawer not to be liable on bill—*Unless he recovered from third party.*]—An equitable plea to an action on a bill of exchange set up a contemporaneous agreement that the bill was not to be paid unless deft. should recover a similar amount from a third person, & stated that, though judgment had been recovered against such third person, the present defts. had been unable to obtain any fruit of such judgment:—**Held**: the plea was good & it was unnecessary to allege that such agreement was in

writing.—**WAXMAN v. BARNARD** (1876), 2 V. L. R. 238.—**AUS.**

620 ii. — Maker not to be liable on note.]—Declaration on a note by payee against maker. Plea, that the note was made under an agreement with pltf. that he should get same discounted, but should never call upon deft. to pay it:—**Held**: plea bad, for the defence set up was a verbal agreement inconsistent with the note.—**MOORE v. SULLIVAN** (1862), 21 U. C. R. 445.—**CAN.**

620 iii. — Under Breach of agreement by maker.]—In an action on a note, deft., the maker, pleaded that in consideration of deft.'s forbearance to commence proceedings for proof in solemn form of a will, pltf. agreed to advance deft., on account of a legacy to which she was entitled, as guardian of her infant children, a sum of money, to be expended in repairs to property of the said children, & that pltf., not having the money required for that purpose, requested deft. to sign a note for the amount, which note was indorsed by pltf. to a firm which had done a portion of the repairs, & that the note was given on the understanding that pltf. would pay it when it became due, & would deduct the amount from the amount payable to deft., as guardian of her said children:—**Held**: deft., having violated her agreement by commencing proceedings, could not set up the agreement as a defence to pltf.'s action on the note.—**MCNEIL v. CULLEN** (1904), 37 N. S. R. 13.—**CAN.**

620 iv. — Note given as acknowledgment only.]—To an action by the exors. of V., on a note made by deft. payable to V. or bearer, deft. set up as defence, that by his last will V. devised to his child, deft.'s wife, £250, & declared that in case he should advance money during his life-time to

her on account of such legacy, a receipt therefor should be sufficient as payment of so much on account of the sum bequeathed; that testator advanced to deft. \$100 on account of the sum devised to his wife, & then delivered to him the note on as evidence of such advance, it was agreed between them that deft. should not be called upon to pay note, but that it should be held as a receipt for so much of the legacy; & deft. alleged that he had always been willing, & had offered to sign a receipt for that sum:—**Held**: pltf. must recover, for verbal evidence could not be received of such an agreement as alleged.—**STREET v. BECKWITH** (1861), 20 U. C. R. 9.—**CAN.**

620 v. — Deft., maker of a note, pleaded no consideration & that the note was intended as a mere evidence of debt or receipt, & as an accommodation note:—**Held**: on the evidence, the parties intended that deft. should be liable on the note & pltf. could recover.—**PETTIT v. BARTON** (1912), 23 O. W. R. 207; 4 O. W. N. 200.—**CAN.**

620 vi. — Signed on behalf of company.]—A plea that the note was taken for a liability of the co., as secretary of which deft. signed, with the understanding that they were to pay same:—**Held**: bad, as setting

**ARMOUR v. GATES** (1857), 8 C. P. 548.—**CAN.**

620 vii. — To an action upon a note by an indorsee against the maker, who signed the note in his private capacity, a plea that deft. made the note as president, etc., of a co., to be binding only upon the co., & on the understanding with the payee that there was to be no recourse upon deft.:—**Held**: bad, as setting up a verbal understanding contrary to

**Sect. 4.—Agreements and conditions affecting delivery and negotiation: Sub-sect. 1, A.]**

jury whether by the arrangement the drawer was to be liable, & if they found that the drawer's putting his name on the back of the bill was mere machinery to enable the money to be raised, they must find a verdict for debt.—**WESTACOTT v. SMALLEY** (1883), Cab. & El. 124.

**621. To renew.]**—In an action on a promissory note or bill of exchange, debt. cannot give in

what the maker's signature to the note would import.—**EWART v. WELLER** (1848), 5 U. C. R. 610.—CAN.

**620 viii.** ——— *If assets of third person sufficient to pay debt for which note given.]*—In an action by payee against the maker of a promissory note, parol evidence is inadmissible to prove an agreement that debt. should not be liable if the assets of B. should be sufficient to pay the debt for which the note was passed.—**M'DOUGALL v. FIELD** (1872), 1 R. 6 C. L. 185.—IR.

**620 ix.** ——— *Until other security failed.]*—Assumpsit on a promissory note, plea, the general issue. Debt., at the trial, pleaded (*inter alia*) that prior to the execution of a certain deed, & on the faith of which it was executed, a parol agreement was entered into, that all proceedings on foot of the promissory note should be suspended until the security given by the deed had failed:—*Held*: assuming the parol agreement to be admissible in evidence, it would not suspend the right of action.—**MOSTYN v. DUFFY** (1852), 2 L. C. L. R. 319.—IR.

**m.** ——— *Maker to be liable—In certain events only.]*—In an action by the payee against one of the makers of a joint & several promissory note, debt. pleaded that the note was made on an agreement that it should be deposited with pltf. as security against any loss which might arise in a certain event; that the deposit was made on such agreement, & that there had been no loss whatever:—*Held*: bad, as the agreement relied on varied the contract evidenced by the note.—**HURTON v. AINSWORTH** (1868), 7 N. S. W. S. C. R. 410.—AUS.

**n.** ——— *—.]*—In an action by the payee of promissory notes against the makers, evidence that the notes had been given by debts. upon an agreement to purchase a house from the payee if debts. were able to sell a house belonging to them, & on the condition that the notes were to be enforceable only in that event:—*Held*: (**MACDONALD, C.J.A., & McJ.A.**) admissible; (**IRVING & GALLIHER, J.J.A.**) not admissible. **WHEAT v. BROWNING** (1914), 28 W. L. 15; 19 B. C. R. 407.—CAN.

*if apprentice failed to serve term.]*—A promissory note was made by debts. to pltf., upon the understanding that it was not to be put in suit, save in the event of W. failing to serve the full term of his apprenticeship to pltf., to whom he had been bound. W. left before the expiration of the term:—*Held*: pltf. was not entitled to recover the amount of the note from debts.—**M'CLARRY v. FIELD** (1839), Craw. & D. 249.—IR.

The jury having found for debt., on evidence improperly received, of an alleged understanding that debt. should be called upon for the interest only, a new trial was granted.—**HAMMOND v. SMALL** (1838), 16 U. C. R. 371.—CAN.

**q.** ——— *Acceptor to be part only.]*—To an action on a note

\$800, debt. pleaded, in substance, that D. had contracted with debt. for delivery to him of plaster to the value of \$1,000, for which debt. agreed, on delivery, to pay by accepting D.'s draft at 3 months, payable to their own order; that D., after having delivered but \$200 worth of plaster, requested debt. to accept, & he agreed to accept & did accept their draft, upon their agreement that debt. should, upon its maturity, pay no more of it than he had received value in plaster; that, thereupon D., being indebted to pltf., indorsed & delivered the draft so accepted to pltf., who received it with the full knowledge & notice of the facts; that when the draft matured, D. had delivered to debt. no more plaster than the said value of \$200, & pltf. & D. agreed that debt. should only pay \$200, & that debt. should make & deliver to D. or order, & D. should indorse & deliver to pltf., the note for \$800, & that the note should be taken by D. & pltf. upon the same agreement & terms, as to delivery of plaster, as the draft for \$1,000 had been made & delivered upon:—*Held*: a bad plea.—**ROYAL CANADIAN BANK v. MINAKER** (1869), 19 C. P. 219.—CAN.

**r.** ——— *In certain event only—Accommodation bill—Holder with notice.]*—Defts. accepted a bill for the accommodation of a manufacturing co. upon the distinct understanding & agreement, to which pltf. were parties, that debts. would not be called upon to pay it unless they were, at its maturity, indebted to the co.:—*Held*: oral evidence to establish the condition or agreement upon which the bill was accepted was admissible to show that the operation of it was suspended until an indebtedness at the end of the term mentioned in it should be ascertained.—**STANDARD BANK OF CANADA v. WITTLAUER** (1915), 8 O. W. N. 187; 33 O. L. R. 441; 23 D. L. R. 507.—CAN.

To an action against debt. as acceptor of a draft debt. pleaded an agreement on the part of the drawers that debt. should be liable only as exor. of P. Pltf. was a holder for value without notice of the alleged agreement:—*Held*: defence must be struck out.—**CAMPBELL v. MCKAY** (1892), 24 N. S. R. 404.—CAN.

**t.** ——— *Indorser to be liable—Only if another signed as co-surety.]*—Deft., sued as indorser, pleaded that he became a party to the note merely for accommodation of A. & upon the condition that B. should also become an indorser as his co-surety, & that B. did not indorse:—*Held*: debt. was not liable, even at the suit of an innocent holder for value.—**ONTARIO BANK v. GIBSON** (1886), 3 Man. L. R. 406; *affd.* (1887), 4 Man. L. R. 440.—CAN.

**u.** ——— *As to form of notes.]*—Evidence of a general agreement with pltf. that all notes made by debts. should be drawn payable in a particular form, is admissible to support a plea of such agreement as to the notes issued on.—**BANK OF MONTREAL v.**

evidence a parol agreement entered into when it was drawn, that it should be renewed, & payment should not be demanded when it became due.—**HOARE v. GRAHAM** (1811), 3 Camp. 57, N. P.

*Annotations*:—**Folld.** **Free v. Hawkins** (1817), 1 Moore, C. P. 535; **Brown v. Langley** (1842), 5 Scott, N. R. 249. **Refd.** **Bowerbank v. Montello** (1813), 4 Taunt. 844; **Moseley v. Hanford** (1830), 10 B. & C. 729; **Abrey v. Crux** (1869), L. R. 5 C. P. 37; **New London Credit Syndicate v. Neale**, [1898] 2 Q. B. 487. **Mentd.** **Russell v. Dunskey** (1821), 6 Moore, C. P. 233; **Spartali v. Beuecke** (1850), 10 C. B. 212.

(1866), 25 U. C. R. 352.—CAN.

**621 i. To renew.]**—An oral agreement to renew, contemporaneous with the making of a promissory note, cannot be set up as a defence to a claim for provisional sentence on the note.—**SIMPSON v. FRANK & NICHOLLS** (1882), 2 E. D. C. 195.—S. AF.

**621 ii.** ——— *—.]*—To an action on a promissory note, debt. pleaded an agreement to renew:—*Held*: even if the agreement had been proved, it would not have constituted a defence.—**BUTLER v. BUTLER** (1913), 24 O. W. R. 677; 4 O. W. N. 1308.—CAN.

**621 iii.** ——— *—.]*—An alleged verbal agreement to renew a promissory note cannot be proved by parol testimony.—**LETRILLIER v. CANTIN** (1896), Q. R. 11 S. C. 64.—CAN.

**621 iv.** ——— *—.]*—In an action on a note, debts. pleaded that pltf., who at the time held a note for the same amount, agreed on certain conditions to renew it from time to time for three years:—*Held*: the plea was bad, as varying the note by parol agreement prior to it.—**HARPER v. PATERSON** (1864), 14 C. P. 538.—CAN.

**v.** ——— *—.]*—A verbal agreement to renew a note is not inconsistent with a deed of mtge. in which debt. covenants to pay the note, & every other note which may be given by way of renewal.—**WALKER & GREENWOOD v. JOHNSON** (1887), 6 N. Z. L. R. 41.—N.Z.

**621 vi.** ——— *—.]*—A verbal agreement to renew a promissory note for valuable consideration is valid & can be pleaded in bar to an action on the note.—**WALKER & GREENWOOD v. JOHNSON** (1887), 6 N. Z. L. R. 41.—N.Z.

**a.** ——— *Upon payment of half.]*—The maker cannot set up an alleged parol agreement by the holder to renew the note upon being paid half the amount.—**HAYES v. DAVIS** (1849), 6 U. C. R. 396.—CAN.

*to half—Giving time for*  
—In an action on a note, debts. pleaded an agreement that when it became due pltf. would renew it for one-half, & give 3 months for the other half; but that they claimed the whole instead of half, which debts. were ready to pay. *Semble*: no defence.—**BANK OF UPPER CANADA v. JONES** (1854), 1 P. R. 185.—CAN.

**c.** ——— *On certain event—Duty of maker to inform holder.]*—Where an event occurs, upon the happening of which a note is, by agreement, to be renewed, but the holder is not aware of it, the maker has a duty cast upon him to inform the holder of the happening of the event which requires a renewal.—**MACARTHUR v. MACDOWALL** (1892), 1 Terr. L. R. 345; *affd.* (1893), 23 S. C. R. 571.—CAN.

**d.** ——— *Duty of acceptor to tender renewal.]*—*Held*: in the absence of proof of a tender or offer by the acceptor to renew, the agreement to renew was no answer to an action on the original bill.—**ATKINSON v. THOMPSON**, [1850] 3 Ir. Jur. —IR.



**Application for renewal—When right of action accrues.]**—The payee of a bill of exchange accepted as a security for A., engages to renew it for 3 months more, if A. be not returned before the bill become due. If the acceptor after the expiration of that time make no application for a renewal of the bill, the payee may bring his action before the expiration of 3 months more.—GIBBON v. SCOTT (1817), 2 Stark. 286, N. P.

*Annotation* :—*Consd. Maillard v. Page* (1870), L. R. 5 Exch. 312.

*See, also, Nos. 652, 653, 657, post.*

**623. —.]**—In an action on a promissory note deft. pleaded, that the note was given under a parol agreement that deft. should renew it when due, by paying discount & giving another note, & that he offered to do so. Pltf. having taken issue on the plea, the judge at the trial would not prevent deft. from going into evidence in support of the plea, although it was suggested that the plea was bad, as setting up a parol agreement to vary a written instrument, because pltf. had taken issue on the plea.—HOLT v. MIERS (1839), 9 C. & P. 191, N. P.

**624. — Equitable defence.]**—As an equitable defence under C. L. P. Act, 1854 (c. 125), s. 83, is admissible only where it sets up matter in respect of which a ct. of equity would have granted relief unconditionally, the ct. refused to allow deft. to plead to an action against him as acceptor of a bill of exchange, that the bill was a renewal of a former bill which had been accepted upon a distinct understanding that it was to be renewed from time to time until deft. should be of ability to meet it, he paying in the meantime interest at 10 per cent., that deft. had always performed his part of the agreement, but that pltf. had refused to renew the bill upon application for that purpose, although he well knew that deft. was not of ability to pay it.—FLIGHT v. GRAY (1857), 3

*what time application for renewal must be made.]*—The maker of a promissory note who has the faculty of renewing it at maturity, is obliged, if he wishes to avail himself of the privilege of renewal, to tender a renewal note at the date of maturity.—WHITE v. SABISTON (1896), Q. R. 12 S. C. 345.—CAN.

**f. —.]**—Where a bill of exchange is accepted on an agreement between the parties to it that it shall be renewed, the request for the renewal should be made as promptly as possible after the maturity of the original bill.—ROWAN v. MITCHELL (1872), 3 V. R. (Law), 20.—AUS.

**g. — To whom renewal note must be tendered.]**—In an action on a note, defts. pleaded that pltf., who at the time held a note for the same amount, agreed on certain conditions to renew it from time to time for three years : & it was repeatedly renewed as agreed ; that when the note sued on became due, a renewal note & the interest were then tendered & refused, though the three years had not expired. Previous renewals had been made by leaving the renewal note at the agency of a bank, paying the interest & taking up the old note, & when the note now sued upon became due, a renewal note & the interest were tendered to M., the agent of the bank, who refused to accept same alleging he had no instructions :—*Held* : the tender of the renewal note & the interest to M., was a sufficient tender, as all the

other renewals were made there : deft. was not bound to tender another renewal & the interest, at the expiration of the three months from the last tender, as pltf. had, by his refusal to accept the former tender, repudiated the agreement, & deft. was not informed that he would accept such renewal.—HARPER v. PATTERSON (1866), 14 C. P. 538.—CAN.

**h. — Onus of proof of application for renewal.]**—Where the defence to an action on a promissory note is an engagement to renew same, it is incumbent on deft. to show that he has taken the proper steps towards such renewal.—NORTON v. KENNEALY 8 W. W. R. 799.—CAN.

**k. — Inability to find Pltf., makers of a promissory note agreed with deft., the payee, that it should be renewable at maturity on payment of bank interest. Deft. discounted the note with the A. Bank, but gave no notice to the bank of the agreement for renewal : pltf., before the maturity of the note, applied at deft.'s usual place of abode for the purpose of tendering a renewal note to deft. & of paying the interest ; deft. was absent, whereupon pltf. left a written notice of their desire to renew, & made due search for deft. & until maturity, were unable to find him ; upon the maturity of the note the bank presented it for payment, and pltf. gave notice to the bank of the agreement, & tendered the bank a renewal & interest, which the bank refused to accept. Pltf. were thereby prevented**

*Young v. Austen* (1869), 38 v. Smith (1895), 39 Sol. Jo.

**625. — Pleading.]**—To a declaration on a bill of exchange by the drawer & payee against the acceptor, deft. pleaded that he accepted the bill on a condition then agreed on between him & pltf., viz. that in a certain event, which occurred, pltf. would renew the bill. The plea did not aver that such agreement was in writing :—*Held* : as the agreement would not be a defence unless it was in writing, the plea must be construed as alleging a written agreement, & the plea was good.—YOUNG v. AUSTEN (1869), L. R. 4 C. P. 553 ; 38 L. J. C. P. 233 ; 20 L. T. 396 ; 17 W. R. 708.

*Annotations* :—*Distd. Abrey v. Crux* (1869), L. R. 5 C. P. 37 ; *Denton v. Peters* (1870), L. R. 5 Q. B. 475. *Appld. Corkling v. Massey* (1873), L. R. 8 C. P. 395. *Apprvd. New London Credit Syndicate v. Neale*, [1898] 2 Q. B. 487. *Refd. Maillard v. Page* (1870), L. R. 5 Exch. 312.

**626. —.]**—Evidence of a contemporaneous oral agreement to renew a bill of exchange is inadmissible on the ground that its effect would be to contradict the terms of the written agreement.—NEW LONDON CREDIT SYNDICATE LTD. v. NEALE, [1898] 2 Q. B. 487 ; 67 L. J. Q. B. 825 ; 79 L. T. 323, C. A.

*Annotation* :—*Folld. Hitchings & Coulthurst Co. v. Northern Leather Co. of America & Doushness*, [1914] 3 K. B. 907.

**— Validity of bill or note given in substitution or renewal.]**—*See Part X., Sect. 2, post.*

**— Discharge by renewal of bill or note or by giving fresh bill or note.]**—*See Part XIV., Sect. 11,*

**627. To defer time of payment.]**—In an action by the payee against the maker of a note, the defence raised was that at the time of giving the note, deft. was charged in execution for a debt,

from exercising their option to renew and compelled to dishonour the note. In an action against deft. for damages :—*Held* : a count setting out the circumstances was a good count.—DOWLING v. JONES (1880), 1 N. S. W. L. R. 134, 347.—AUS.

**l. — Agreement not made with holder at maturity.]**—In an action by pltf. for damages for refusal of deft. to allow pltf. to renew a note made by them in accordance with agreement, deft. pleaded that at the time the note fell due, the A. Bank was the holder for value of the note and was not acting as deft.'s agent, and that the alleged breach of deft.'s agreement was the refusal of the bank to renew the note :—*Held* : the plea was good.—DOWLING v. JONES (1880), 1 N. S. W. L. R. 134, 347.—AUS.

**m. Note not to be payable at maturity.]**—Parol evidence of a verbal agreement, made at the time of signing a promissory note, that the note should not be payable at maturity, is not admissible ; & more especially if there be a written agreement, made at the same time, inconsistent with the alleged verbal agreement.—BANK v. BRYDON (1885), 2 Man.

**627 i. To defer time of**  
Parol evidence cannot be received to show that a bill of exchange accepted payable 3 days after sight, was not to be paid till a further time had elapsed.—BRADBURY v. OLIVER (1835), 5 Q. B. 703.—CAN.



**Sect. 4.—Agreements and conditions affecting delivery**

& it was then agreed verbally between pltf. & deft. that the latter should be discharged on giving the note; & that if it was not convenient to deft. to pay the note at maturity, pltf. would give him time & that the action had been commenced contrary to such agreement:—*Held*: such verbal contract, collateral to the instrument, could not be admitted to annul the very terms of the written contract.—*DUKES v. Dow* (1817), *Chitty on Bills of Exchange*, 11th ed., p. 102.

**628. —** Until death of maker.]—Where a promissory note, on the face of it, purported to be payable on demand, parol evidence is not admissible to show, that at the time of making it, it was agreed that it should not be payable till after the decease of the maker.—*WOODBRIDGE v. SPOONER* (1819), 3 B. & Ald. 233; 1 Chit. 661; 106 E. R. 647.

*Annotations*:—*Folld.* *Moseley v. Hanford* (1830), 8 L. J. O. S. K. B. 261. *Distd.* *Brown v. Langley* (1842), 12 L. J. C. P. 62. *Folld.* *Stott v. Fairlamb* (1883), 52 L. J. Q. B. 420. *Refd.* *Abbot v. Hendricks* (1840), 2 Scott, N. R. 183. *Mentd.* *Fletcher v. Fletcher* (1844), 4 Hare, 67; *Hulse v. Hulse* (1856), 17 C. B. 711.

**629. —**].—Where a promissory note is, on the face of it, made payable on demand, oral evidence of an agreement entered into when it was made, that it should not be paid until a given event happened, is inadmissible.—*MOSELEY v. HANFORD* (1830), 10 B. & C. 729; L. & Welsb. 176; 5 Man. & Ry. K. B. 607; 8 L. J. O. S. K. B. 261; 106 E. R. 621.

*Annotations*:—*Folld.* *Knill v. Stockdale* (1840), 6 M. & W. 478. *Distd.* *Brown v. Langley* (1842), 12 L. J. C. P. 62. *Refd.* *Adams v. Wordley* (1836), Tyr. & Gr. 620; *Abbot v. Hendricks* (1840), 2 Scott, N. R. 183; *Spartall v. Benecke* (1850), 10 C. B. 212; *Abrey v. Crux* (1809), L. R. 5 C. P. 37. *Mentd.* *Gillett v. Whitmarsh* (1846), 8 Q. B. 966.

**630. —**].—In an action on a bill of exchange:—*Held*: it was an inadmissible defence that by contemporaneous parol agreement it was stipulated

that payment should not be called for until the determination of another suit, & that that suit was still undetermined.—*ADAMS v. WORDLEY* (1836), 1 M. & W. 374; 2 Gale, 29; Tyr. & Gr. 620; 5 L. J. Ex. 158; 150 E. R. 479.

*Annotations*:—*Refd.* *Abbot v. Hendricks* (1840), 2 Scott, N. R. 183; *Spartall v. Benecke* (1850), 10 C. B. 212; *Flight v. Gray* (1857), 4 Jur. N. S. 13; *National Assoe. Asscn. v. Stoy* (1863), 11 W. R. 959; *Young v. Austen* (1869), L. R. 4 C. P. 553.

**631. —**].—A parol agreement contemporaneous with a promissory note, to the effect that the note, though on the face of it payable on demand, should not be enforced for 3 years, is immaterial & inoperative to contradict the terms of the note.—*STOTT v. FAIRLAMB* (1883), 52 L. J. Q. B. 420; 48 L. T. 574; *affd.* not touching this point, 53 L. J. Q. B. 47, C. A.

**632. To pay by instalments.**].—It is not competent to the acceptor of a bill of exchange to set up a parol contract inconsistent with the contract upon the face of the bill.

In *assumpsit* by indorsee against acceptor of a bill of exchange, deft. pleaded, to the further maintenance of the action, that he was indebted to the drawer in a sum less than the amount of the bill, that, before the acceptance, it was agreed between him & the drawer, that he should pay him such lesser sum by four instalments, that he duly paid three of such instalments before, & the fourth after, the commencement of the action, & that the bill was indorsed to pltf. without value or consideration:—*Held*: not an issuable plea.—*BESANT v. CROSS* (1851), 10 C. B. 895; 2 L. M. & P. 351; 20 L. J. C. P. 173; 17 L. T. O. S. 95; 15 Jur. 828; 138 E. R. 354.

**633. To withhold enforcement until balance struck.**].—In an action by A. & Co., indorsees & holders of a promissory note against B., the payee & indorser, B., pleaded that a verbal agreement existed between A. & Co. & C. & D., the makers, to withhold the enforcement of the note

**627 ii. —**].—Parol evidence is not admissible to vary the engagement to pay at the time specified in a bill or note.—*DAVIS v. MCSHERRY* 7 U. C. R. 490.—CAN.

**627 iii. —**].—"For value . . . to pay A. & B., or their the sum of £102, to be paid in proportions":—*Held*: no parol evidence could be admitted of an agreement that the money should not be payable for four years, or until after the death of pltf.'s father.—*McQUEEN v. McQUEEN* (1852), 9 U. C. R. 536.—CAN.

**627 iv. —**].—*Held*: evidence of a parol agreement to extend for two years the time for the payment of a note payable on demand, was not admissible.—*PORREOUS v. MUIR* (1884), 8 O. R. 127.—CAN.

**627 v. —**].—In an action on a promissory note, & payable on a day certain, parol evidence is not admissible to show that its payment postponed to an uncertain period.—*POLLOCK v. QUINAN* (1842), Arm. M. & O. 377.—IR.

**627 vi. —**].—An oral alleged to have been entered into the parties to a promissory note at the time when it was made that, upon its falling due, an extension of time would be given, constituting such a variance from the terms of note as to be inadmissible in

evidence, & therefore affords no defence to an action on the note.—*ORAMONDE STEYN* (1901), 18 S. C. 1.—S. AF.

**o. —** Until delivery of transferred.].—To an action on a promissory note given for the value of shares in a vessel, transferred by bill of sale from pltf., to defts., defts. set up as a defence an oral agreement that the note should not become due until actual delivery of the property:—*Held*: the alleged agreement could not be admitted to vary the terms of deft.'s unconditional written promise.—*TAYLOR v. MACFARLANE* (1878), 3 R. & C. 190.—CAN.

**inconsistent with agreement.**].—On the sale of a s the mislives provided (*inter alia*) that the seller should take bills from the purchaser for the price; & that the purchaser should be accepted as tenant of the premises by the landlord for the remaining years of the The purchaser was ac- as tenant, & granted promissory payable on demand to the seller for the price. After the purchaser had been about five years in possession, & while the lease was still current, the seller charged him on the notes; whereupon the purchaser averred, that, in the negotiations prior to the mislives, it was agreed between the parties that payment of the price should be postponed till the expiry of the lease:

—*Held*: evidence as to the alleged agreement to postpone payment was inadmissible.—*M'ALLISTER v. M'GALLAGLEY*, [1911] S. C. 112; 48 Sc. L. R. 32.—SCOT.

**q. —** Agreement shown to be conditional- Condition unfulfilled.].—Provisional sentence granted on certain promissory notes, where defts. set up an oral agreement to give time alleged to have been made before, or at the time of, the making of the notes, & where pltf. alleged that such agreement was conditional upon the consent of all the creditors being given, & all had not consented.—*TARRY v. SOUTH-WEST DIAMOND MINING CO.* (1883), 2 H. C. —S. AF.

**632 i. To pay by instalments.**].—Pltf. pressing for payment of a debt, a promissory note payable on demand for the amount due, was executed; at the same time an agreement was entered into by deft. to liquidate the amount due on the promissory note by fortnightly consignments:—*Held*: the agreement to liquidate the amount due by fortnightly consignments was a collateral undertaking consistent with the existence of the note containing an absolute promise to pay; but such collateral agreement was no answer to the suit on the promissory note.—*SIMON v. HAKIM MAHOMED SHERIFF* (1896), 1 L. R. 19 Mad. 368.—IND.

**632 i. To withhold enforcement of pay-** that in consideration of

## PART VIII.—DELIVERY.

till a balance of a floating account was struck:—*Held*: the plea of a verbal agreement qualifying the written contract expressed in the note, was bad in law.—*POLLOK v. BRADBURY* (1853), 8 Moo. P. C. C. 227; 14 E. R. 87, P. C.

**634. Not to require payment without notice.]—**Where a promissory note had been given for an old debt, on an agreement or understanding that payment should not be required without "ample notice," & nearly 4 months' notice was given to pay, but about a month before the expiration of that time the action was brought:—*Held*: there was no defence on either legal or equitable grounds, the plea showing no consideration, so that the agreement could not be enforced in equity, & as an agreement to suspend the right of action, if enforced at law, would destroy the right of action, equity would not interfere to give it that effect.—*OWENS v. PIZEY* (1862), 1 New Rep. 19; 7 L. T. 350; 11 W. R. 21.

**635. To take up bill.]—**Deft. being lessee of a house, sublet it to pltf., & sold him the goodwill & fixtures, & afterwards drew a bill on him for arrears of rent & unpaid purchase-money. The bill was dishonoured, & C., the holder, sued pltf. on it. Pltf. thereupon told deft. he could not pay the bill, & must call his creditors together, & deft. then said that, rather than have the business so injured, he would buy it back & take up the bill, if pltf. would obtain time from the superior landlord, & that pltf. did. Subsequently pltf. entered into a written agreement for the resale of the business to deft., & thereby authorised him to settle C.'s action. Deft. did not take up the bill, & the sheriff sold the goods. Pltf. then sued him for not settling C.'s action:—*Held*: as the written agreement did not contain all the terms

of the contract between the parties, & as the parol agreement was distinct & collateral, evidence of the latter was admissible.

There is here a prior agreement relating to a bill of exchange, with which the subsequent written agreement did not, in any way, interfere. The jury have found that deft. bound himself by a distinct oral agreement not to take up C.'s bill, & upon this the written contract is wholly silent. (*BYLES, J.*)—*LINDLEY v. LACEY* (1861), 17 C. B. N. S. 578; 5 New Rep. 51; 34 L. J. C. P. 7; 11 L. T. 273; 10 Jur. N. S. 1103; 13 W. R. 80; 144 E. R. 232.

*Annotations*:—*Reid. Young v. Austen* (1869), 38 L. J. C. P. 233; *Newman v. Gatti* (1907), 24 T. L. R. 18.

**636. To exhaust all remedies.]—**In an action by an indorsee against an indorser evidence of a parol agreement between the parties that pltf. should exhaust all remedies against the acceptor before the proceedings against deft.:—*Held*: to be inadmissible.—*HENRY v. SMITH* (1895), 39 Sol. Jo. 559, D. C.

**637. To be paid out of particular fund.]—**The legal effect of a bill of exchange cannot be controlled by a verbal condition, & where it was verbally understood between the acceptor & payee of a bill that the bill should be paid out of a particular fund, this does not control the legal operation of the bill.—*CAMPBELL v. HODGSON* (1819), Gow. 74, N. P.

*Annotations*:—*Reid. Mosely v. Handford* (1830), 6 Man. & Ry. K. B. 607; *Abbot v. Hendricks* (1840), 3 Scott, N. R. 183. *Mentd. Chitty v. Naish* (1834), 2 Dowl. 511.

**638. Excluding liability if goods not up to sample.]—**Pltf. sued defts. on a promissory note made by deft. co. & indorsed at the request

notes of A. being deposited with pltf. as a security, pltf. agreed not to sue upon this note until the others should become due:—*Held*: plea bad.—*DURAND v. STEVENSON* (1849), 5 U. C. R. 336.—CAN.

**633 ii. —.]—**Pltf. declared on the following, as a note: "Three months after date, we, or either of us, promise to pay to R. (ptf.) or F., his guardian, at the post office, E., £119, value received in rent of farm"; adding a count on an account stated. The note was given for rent due, & pltf. was abroad at the time of making the note:—*Held*: evidence was inadmissible of a verbal understanding that the note was not to be enforced until pltf.'s return, or until he could send a power of attorney to some one to collect it.—*REED v. REED* (1853), 11 U. C. R. 26.—CAN.

**633 iii. — Pending ascertainment of rights.]—**A., the owner of a schooner, mortgaged it to different persons, including pltf. & deft. respectively. A. failed, & B. was appointed his assignee, & a suit was commenced to ascertain the rights of the parties. During its pendency, all the parties thereto agreed to sell the schooner to C., without prejudice to the issues raised, for the sum of \$1,350, for which sum C.'s notes were taken. Deft., desirous of participating in C.'s securities to the amount of \$400, was allowed by the other mtgees. to take C.'s notes to that amount, on condition that he substituted notes of his own, indorsed in blank by D., for the same amount, which he did. These notes, it was agreed, should abide the result of the suit. The decree rejected all the

mtgees. except pltf.; pltf. then sued deft. on his notes:—*Held*: pltf. entitled to recover against deft. on his notes.—*COLEMAN v. SHERWOOD* (1853), 3 C. P. 372, 381.—CAN.

**a. Not to require payment—While certain condition exists.]—**It was agreed that payment of the notes sued on was not to be required while certain books remained in the possession of pltf. The notes were protested for non-payment, & pltf. sued the maker & indorser jointly & severally for the amount. At the time of the action some of the books were still in the possession of pltf.:—*Held*: pltf. were not entitled to recover.—*ROBERTSON v. DAVIS* (1897), 27 S. C. R. 571.—CAN.

**637 i. To be paid out of particular fund.]—**Action by payee against the maker of a note. Plea, on equitable grounds that pltf. was captain of a rifle co. organized according to law; that deft. being a member of it & a tailor, was employed to make the uniforms, which it was agreed between pltf. & deft. should be paid for out of the money coming to the co. for their drills; that in order to raise the necessary sum at once, it was also agreed that a note should be discounted, to be reduced from time to time by the money so received, & renewed until paid off; that in pursuance of the agreement a note was made by deft. payable to pltf. which was discounted, & reduced by payment of the money derived from the first ten days' drill, & renewed by the note declared upon, which it was understood should be in the same way reduced, & renewed, or paid off by the proceeds of the second drill; that before said drill pltf. wrongfully dis-

banded the co., so that they unable to draw any more pay, w to pltf.'s wrongful act, it became to

retire the note:—*Held*: the plea afforded no defence. *VIDAL v. FORD* (1859), 19 U. C. R. 88.—CAN.

**637 ii. —.]—**In an action by pltf. on a promissory note by deft. payable to L. & indorsed by maturity to pltf.:—*Held*: deft.'s dence of a contemporaneous by which he was not to be liable on the note, but was to pay it out of money coming to his hands from A. was not admissible.—*CONLEY v. ASHLEY* (1902), 1 O. W. R. 704.—CAN.

**637 iii. —.]—**In an action on a note a plea on equitable was put forward stating a col-agreement to out of the rents of certain lands, that deft. had offered to execute a deed for the purpose, & had tendered it to pltf., but he refused:—*Held*: the (1867), 16 W. R. 88; 1 L. L. T. Jo. 648.

**a. As to rule of interest.]—**Deft. indebted to pltf. on a promissory for Rs.500, applied to him for a further loan of Rs.1,500, proposing to lay out the whole amount of Rs.2,000 in the performance of a certain contract & offering to give pltf. a share in contract; pltf. consented to lend t sum payable with interest at 6 or per cent. per mensem in lieu of a partner, & also to give deft. two months' previous notice on re of the loan. De de-murred to the rate of interest, which he



**Sect. 4.—Agreements and conditions affecting delivery 1, A.]**

of pltf. by deft. D., who was president of deft. co. The note was given in part payment of goods supplied by pltf. to the co. The co. did not appear at the trial, but D. appeared & set up an oral agreement made by him with pltf., contemporaneous with the promissory note, that he was not to be called upon to pay if the goods supplied to the co. should be unequal to sample. The goods were retained by the co., but D. proved that they were unequal to sample:—*Held*: the oral agreement relied upon by D. not being an agreement suspending the coming into force of the contract contained in the promissory note, but being an agreement in defeasance of that contract, evidence in support of it was inadmissible, & was liable on the promissory note.—*HITCHINGS & COULTHURST CO. v. NORTHERN LEATHER CO. OF AMERICA & DOUSHKES*, [1914] 3 K. B. 907; 83 L. J. K. B. 1810; 111 L. T. 1078; 30 T. L. R. 688; 20 Com. Cas. 25.

**639. As to rate of exchange.**—The drawer of a cheque "for 7,680 francs (Paris)" cannot as between himself & an indorsee of the cheque, set up an oral agreement between himself & the original payee that the rate of exchange shall be that ruling at the date of the cheque.—*COHN v.* (1920), 36 T. L. R. 767; 64 Sol. Jo. 636.

**640. Note made subject to others joining.** When a person signs a promissory note on a representation that others are to join, & one afterwards refuses to sign, the payees cannot recover in an action on the note against the person who signed it, unless the jury are satisfied that such person, knowing the facts, & being aware of his rights, had consented to waive his objection.—*F v. GIBBS* (1830), 4 C. & P. 466, N. P.

*Mentd. Gardner v. Walsh* (1855), 3 C. L. R. ; *Beckett v. Addyman* (1882), 9 Q. B. D. 783.

, further, cases in Part X., Sect. 9, sub-sect. 1,

**641. By surety to note subject to condition—Mistake—Discharge of surety.**—To a declaration upon a joint & several promissory note given to

said he would further consider, but, being in immediate want of the money, proposed to borrow it on a promissory note. Pltf. accordingly, on Oct. 13, 1870, lent deft. Rs.1,500, & obtained, in lieu of the note for Rs.500, which was returned, a promissory note for Rs.2,000, payable on demand, with interest at 12 per cent. per annum, which note, pltf. alleged it was agreed, should be cancelled on receipt of a letter from deft. fixing the rate of interest, but this was denied by deft. Deft. subsequently wrote two letters to pltf., agreeing to pay interest at 5 per cent. per mensem, & pltf. indorsed the note as cancelled. Pltf. that he received interest at the rate of 5 per cent. per mensem for 2 months, & produced a witness who to that effect. This deft. *Held*: the oral evidence was to show the rate of interest of the

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of  
Pltf. sought to recover on promissory note. Defts., B. & L., 3 years before had been parties

pltf. by deft. & E., payable on demand, deft. pleaded, for defence on equitable grounds, that he made the note jointly with E. for the accommodation of E., & as his surety only, to secure payment of a loan made by pltf. to E., & that, before & at the time when the note was made, pltf., having notice of the premises, agreed with deft., in consideration of his making the note as such surety, that pltf. would call in & demand payment of the note from E. within 3 years from the date thereof, that pltf., at the time of making the note, with intent to carry out the agreement, & with the assent of deft. & E., wrote on the back of the note as follows: "Memorandum. This note is to be paid off within 3 years from date," that the memorandum was signed by E., but that, by mistake of all the parties, it was omitted to be mentioned in the memorandum that pltf. was to call in & demand payment of the note from E. within the 3 years, & that pltf. neglected to demand or call in payment of the note within the period aforesaid, whereby he lost the means of obtaining payment from E., who had since become & was insolvent:—*Held*: this plea disclosed a good equitable defence to pltf.'s demand against deft.

To an action by the payee against one of two makers of a promissory note, deft. pleaded that he made the note jointly with E., for the accommodation of E., & as his surety only, to secure payment of a loan of £200 then made by pltf. to E., & that, at the time of the note being made & signed by deft. & E. a memorandum was by agreement between pltf., E., & deft., indorsed upon the note, & signed by E., in the following words: "Memorandum. This note is to be paid off within 3 years from date, E.," & that pltf. did not compel payment of the note within the period of 3 years, which elapsed before the commencement of the suit:—*Held*: the plea afforded no defence.—*LAWRENCE v. WALMSLEY* (1862), 12 C. B. N. S. 799, 811; 31 L. J. C. P. 143; 5 L. T. 798; 10 W. R. 344; 142 E. R. 1356, 1361.

**642. Between indorser & indorsee—Not to sue indorser.**—An indorsee of a bill or note taking it under an agreement not to sue the

ment of the note & it was found that the condition on which P. indorsed had been broken by pltf., whose action altered the contract with the principal debtor detrimental to the interests of the surety:—*Held*: evidence of the parol arrangement was not admissible.—*ROYAL BANK OF CANADA v. POUND* (1917), 24 B. C. R. 23.—CAN.

**641 ii. —.**—In an action against the indorsers of a promissory note, made by deft. S. in favour of pltf. & indorsed by deft. C., C. contended that he indorsed the promissory note on the verbal understanding that it would be paid out of the proceeds of the sale of some of S.'s property & that he would not be called upon to pay it. At the time the notes were presented to C. there was no signature either on the face or back, but C. knew he signed as indorser:—*Held*: such understanding varied the written contract contained in the promissory note, & being made contemporaneously was not binding on pltf.—*MOYLAN v. SALINGER &* (1901), 3 W. A. L. R. 121.—AUS.

**642 i. Between indorser & Indorser not to be liable.**—A plea setting up a parol agreement that deft. should not be liable, inconsistent with the

to a note of which the one sued on was a renewal as sureties for R. M., one of the pltf.'s firm, procured deft.'s signature to the note sued on by stating he only wanted it to produce to his board & they would never be called on to pay it, & that he would get R. also to sign. R. was then known to be without means. He did not in fact sign:—*Held*: defts. could not set up a contemporaneous parol agreement that they should not be called on to pay.—*MURPHY v. BRYDEN* (1906), 7 O. W. R. 250.—CAN.

**indorsed subject to being by specified makers.**—A note not by any one was indorsed by ~~def.~~, & delivered by him to pltf., upon condition that A. & B. should sign it as makers; it was signed only by C.:—*Held*: these facts might be shown by deft. under a plea denying his indorsement.—*ARSTIN v. FARMER* (1870), 30 U. C. R. 10.—CAN.

**641 i. By surety to note subject to condition.**—In an action for payment of a promissory note signed by F. & indorsed by P. evidence was submitted that P. indorsed under an arrangement between pltf. & F. that pltf. would accept \$100 a month from F. in pay-



indorser cannot sue such indorser, though the indorsement be unqualified.—PIKE v. STRE<sup>TT</sup> (1828), Mood. & M. 226; Dan. & Ll. 159, N. P.

**-Distd. Foster v. Jolly (1835), 1 Cr. M. & R.**

Conditional indorsement, see Part XI., Sect. 15, sub-sect. 4, *post*.

643. Between drawer & third person—Condition not communicated to payee—Payee holder for value.]—K. had chartered a vessel of deft. at the hire of £30 a week, payable every 4 weeks in advance, with liberty for deft. in case of non-payment to re-take the ship. A month's payment of £120 in advance being due, K. applied to pltf. to assist him, & pltf. gave K. a cheque for £60 payable to deft. or order, on the terms that K. should inform deft. that the cheque was given on the consideration of deft.'s allowing the vessel to proceed on a certain voyage. K. paid the cheque to deft., but did not tell him of pltf.'s conditions. As the whole of the £120 was not paid, deft. stopped & re-took the vessel. The cheque being presented at pltf.'s bankers, on the part of deft., was duly cashed:—*Held*: as deft. had received pltf.'s cheque, which was a negotiable security, without notice of any conditions, & for a valuable consideration, the debt due to him from K., pltf. was not entitled to recover from deft. any portion of the proceeds.—WATSON v. RUSSELL (1864), 5 B. & S. 908; 34 L. J. Q. B. 93; 11 L. T. 641; 13 W. R. 231; 122 E. R. 1090, Ex. Ch.

**Annotations :—**Apprvd. Currie v. Misa (1875), L. R. 10 Exch. 153. **Consd.** Talbot v. Von Boris, [1911] 1 K. B. 854.

indorsement on the note, is bad.—  
HART v. DAVY (1844), 1 U. C. R. 218.—  
CAN.

642 II. ———.]—Parol evidence will not be received to show that a person who indorsed a promissory note to another for valuable consideration stipulated at the time that he was not to be liable on the indorsement.—**SMITH v. SQUIRES** (1901), 21 C. L. T. Occ. N. 216; 13 Man. L. R. 360.—**CAN.**

642 Ill. S. P. EMERSON v. ERWIN  
(1903), 10 B. C. R. 101.—CAN.

642 iv. .)]—Declaration upon a note payable to deft. or order, & indorsed by deft. to pltf. after it became payable. Plea, setting up a collateral agreement that deft. should not be liable, not alleging it to have been in writing:—*Held*: bad.—HALL v. FRANCIS (1854), 4 C. P. 210.—CAN.

642 v. -.)—In an action by an indorsee against the indorser, deft. pleaded that the note was intended to have been made to pltf: or order, & indorsed by him to deft., to secure a debt due to deft. by the maker, but by mistake it was made payable to deft. or order; & he thereupon indorsed it to pltf., in order to enable him to sue the maker, & on the understanding that pltf. should have no recourse against him as indorser:—*Held*: a good defence.—BLAIN v. OLIPHANT (1862), 9 U. C. R. 473.—CAN.

642 vi. -.)—To a declaration, by M., on a note made by N., payable to M. or order, indorsed by them to deft. & by deft. to pltf., deft. pleaded that M. was pltf., & payee of the note, & the same person who indorsed it to deft., & is liable to deft. as such indorser, if he should be made to pay. Replication, that pltf.' name was used as payee for form only; & it was understood by all parties to the note.

that, although nominally made payable to plff., it was substantially to be paid to deft., because, by a special agreement between plff. & deft., notwithstanding the form of the note, plff. was not to become liable to deft. by indorsing to him. The evidence showed that the note was given to enable the makers to get goods on credit from plff., & that deft. knew he was indorsing for that purpose:—*Held*: plff. could recover.—*MOFFATT v. REES* (1857), 15 U. C. R. 527.—CAN.

642 vii. ———.]—To an action on a promissory note against the indorser deft. pleaded (*inter alia*) that at the time the indorsement was made the indorser agreed verbally to accept the note on the credit of the maker alone, without recourse to deft.:—*Held*: parol evidence of such agreement was inadmissible.—CHAMBERLIN v. BALL (1869), 5 L. C. J. 88; 11 L. C. R. 50.—CAN.

642 vill. ———.]—In an action upon a promissory note against M. & Co., as makers, & J. as indorser, judgment was rendered by default against the firm, & a verdict was found in favour of J. as it appeared by the evidence that he had indorsed without consideration for the accommodation of the holders, & upon an agreement with them that he should not be held in any manner liable upon the note:—*Held*: in a subsequent action on the judgment to recover from J. as a member of the firm who had made the note, that the verdict in the former suit was conclusive in his favour, the agreement meaning that he was not to be liable either as maker or indorser.—*LESTER v. RAY, STREET & Co. (1895), 26 S. C. R. 79.—CAN.*

642 ix. ——— Except upon  
pening of certain event.])—A  
note indorsed on the express under-  
that it should only be avail-

**Not to sue drawer or acceptor—Accommodation bill—Absence of consideration.]—**In an action by the indorsee against the acceptor of a bill of exchange, it is competent to the acceptor to show that the acceptance was for the accommodation of pltf., & that he has received no consideration from the drawer, & that it was agreed that the bill, when due, should be taken up by pltf.—**THOMPSON v. CLUBLEY** (1836), 1 M. & W. 212; Tyr. & Gr. 482; 5 L. J. Ex. 114; 150 E. R. 411.

**Annotation :—***Mentd. Abbott v. Hendricks* (1840), 4 Jur. 1113.

645. Not between same parties as to note.]—  
A. made his promissory note payable on demand, with interest, in favour of B. & C., the exors. of D. A. was, with several other relatives, to be entitled to certain benefits, under D.'s will, upon the coming of age of the youngest legatee named in the will. By an agreement made between the legatees, the exors. were authorised to lend the funds in their hands on personal security, & a part of the funds having been lent to A., as well as to the other legatees, he gave the exors. the note in question. By the agreement it was settled that the notes given to the exors. should not be sued on till the youngest legatee had arrived at the age mentioned in the will. The exors. did not sign the agreement, but when it had been signed by the other parties, took it into their possession. The exors. brought the action while the legatee in question was alive, & before he had attained the specified age. A. pleaded the agreement as an answer to the action, averring

— upon the happening of a certain condition is not binding upon the indorser where the condition has not been fulfilled. — **COMMERCIAL BANK OF WINDSOR v. MORRISON** (1902), 22 O. L. T. Occ. N. 196 ; 32 S. O. R. 98. — **CAN.**

642 x. --- Until another fund exhausted.]--In an action by the indorsee of a promissory note against the indorser, evidence will not be permitted of a contemporaneous oral

deft. agreed to indorse the note in pltt.'s favour & pltt. agreed not to enforce deft.'s liability upon the note unless & until another fund had been exhausted, & then only for the balance unpaid, such agreement being inconsistent with the terms of the written contract. —*HESLOP v. PHILLIPS* (1898), 21 V. L. R. 498. —*AUS.*

642 xi. On liabilities.]—In an action by the indorsee the indorser of a note given for the price of land, evidence of a parol agreement entered into when the note was indorsed, that if deft. paid the taxes chargeable against the land pltf. would relieve him from liability as indorser, is not admissible.—MOORE v. GROSVENOR (1890), 30 N. H. R. 221.—CAN.

c. — As to application of proceeds.)—Where a bill of exchange is indorsed upon the understanding & subject to an agreement that the indorsee shall apply the proceeds of the bill, if discounted, in a particular way, the misapplication of such proceeds furnishes no answer to an action on the bill by the indorsee against the indorser.—BANK OF AUSTRALASIA v Mac. 439.—N.Z.

f. ——— *Maker not to be liable.*) --  
Deft. made certain promissory notes  
renewals of prior notes in favour of

*Sect. 4.—Agreements and conditions affecting delivery and negotiation:*

that pltf. accepted & received the note on the terms & conditions of the agreement, & that the youngest legatee was still under age. At the trial the agreement was proved:—*Held*: the plea was bad in substance, for the agreement was collateral, & was not between the same parties as the note.—*SALMON v. WEBB & FRANKLIN* (1852), 3 H. L. Cas. 510; 10 E. R. 201, H. L.; *affg.* S. C. *nom.* *WEBB v. SPICER* (1849), 13 Q. B. 894, Ex. Ch.

*Annotations*:—*Apprvd.* *Pollok v. Bradbury* (1853), 8 Moo. P. C. C. 227. *Reid.* *Manley v. Boycot* (1853), 2 E. & B. 46. *Mentd.* *Hudspeth v. Yarnold* (1850), 9 C. B. 625; *Stroughill v. Buck* (1850), 14 Jur. 741; *Weedon v. Woodbridge* (1850), 13 Q. B. 470; *Canham v. Barry* (1855), 15 C. B. 597.

**646. Right to sue on agreement.]—**Pltf. declared on a promissory note given to him by deft., & alleged that before the note was given it was agreed between them that if deft. should buy of pltf. all the malt expended in his dwelling-house for 3 years the note should be void, averring that deft. had expended a certain quantity of malt, etc., but had not bought it of pltf.:—*Held*: good on demurrer, because the note formed no part of the agreement, or at the most that the agreement must be considered only as a defeazance, & then if deft. would take advantage of it he should show the performance on his part.—*CORNISH v. BOLITHO* (1739), Willes, 145; 125 E. R. 1102.

**647. Debt to be discharged by composition.]—**To an action on a promissory note for £150, by payee against maker, deft. pleaded that W. was indebted to pltf. in £3,612 10s., & was unable to pay in full, whereupon it was agreed between pltf., deft., & W., that pltf. should accept a composition, to wit, £1,500 in satisfaction & discharge of the £3,612 10s., & in consideration of the premises, & that pltf. would accept the £1,500 in satisfaction & discharge, deft. should make the note in part payment, & on account, of the £1,500, & that pltf. should not enforce, or attempt to enforce, or in any way claim or demand, payment

of any further sum than the £1,500, that deft. made the note upon the terms of the agreement, & that there never was any other consideration, that W. afterwards, & before the note was due, became bkpt., yet pltf., without deft.'s consent, proved in the bkpcy. for the full amount of the £3,612 10s.:—*Held*: (1) a good plea; (2) the plea was not proved by evidence of an agreement that, on giving £350 down, £150 by note, & a bond of other parties for £1,000, W. should be released from the original debt.—*GILLETT v. WHITMARSH* (1846), 8 Q. B. 966; 15 L. J. Q. B. 291; 7 L. T. O. S. 136; 10 Jur. 904; 115 E. R. 1138.

*Annotation*:—*Reid.* *Young v. Austen* (1869), L. R. 4 C. P. 553.

*See, generally*, Part XIV., Sect. 2, sub-sect. 4; Sect. 10, sub-sect. 1; & Sect. 12, sub-sect. 3, *post*.

**648. Limiting liability—Admissibility of evidence.]—**B. & C. drew two bills upon one another for the purpose of making an advance of £400 to D. It was agreed that mtges. should be prepared, & that the advance was to be made in the following proportions: £100 by B. & £300 by C. An agreement was prepared by E., the solr. for all the parties, but it did not contain any limitation of liability by B. C. having failed, E., the solr., being a creditor, got both bills indorsed to himself, & then sued B. for the whole amount:—*Held*: parol evidence was admissible not to vary or add to the written agreement, but to show the instructions & directions given to E. for him to prepare the securities.—*GEMMILL v. MACALISTER* (1863), 7 L. T. 841; 9 Jur. N. S. 285; 11 W. R. 486, H. L.

**649. Whether consideration gift or loan.]—**W., the uncle of pltf.'s wife, was applied to by a friend of pltf. to advance £1,000 to defray some expenses connected with pltf.'s election as Member of Parliament. W. declined to make the advance, but said he would give pltf. £500 & deduct it from the legacy he intended to leave to his wife. Shortly afterwards W. sent pltf. a cheque for £500. Pltf. wrote to thank W., saying that he would gladly repay it at an early opportunity, & hoped shortly to be able to do so. A few weeks afterwards, as pltf. deposed, a conversation took place between him & W., & it was agreed at pltf.'s instance that

B. who indorsed them to pltf. bank. The manager of pltf. bank & B. made a verbal agreement that B. should procure deft. to make the renewal notes upon the express terms that deft. should not be liable in respect thereto:—*Held*: evidence of this verbal agreement was properly admitted, & deft. was discharged from liability on these notes.—*BANK OF SOUTH AUSTRALIA v. WILLIAMS* (1893), 19 V. L. R. 514.—AUS.

**5. Drawer not to be liable.—In event of drawee choosing not to pay.]—**Where a man draws a bill to pay a debt, he cannot set up against the indorsee that the bill was given upon a prior verbal understanding between himself & pltf., that the drawee would not pay unless they chose, & that in that event he was not to be liable as drawer.—*ADAMS v. THOMAS* (1860), 7 U. C. R. 249.—CAN.

#### **b. Between indorser &**

**Evidence of a declaration made by the indorser of a promissory note to the maker thereof at the time of indorsing, that the indorsement is made not for the accommodation of**

the maker, but for the accommodation of the payee, under an antecedent agreement between the indorser & the payee, is not admissible in an action by the payee against the indorser.—*McLAREN v. WALKER* (1883), 2 N. Z. L. R. 160.—N.Z.

**Debt to be discharged by assignment for benefit of creditors.]—**To an action on notes & bills of exchange against deft. as jointly liable with H., deft. pleaded satisfaction & discharge of pltf.'s claim before action, by with H. an assignment of their joint effects to pltf. for the benefit of creditors, & that pltf. accepted this in full satisfaction & discharge of the cause of action in question. At the trial parol testimony was admitted of the agreement to accept the assignment in satisfaction & discharge:—*Held*: it had been properly received, the effect of it being not to vary the terms of the writing, but merely to prove a collateral fact.—*WHITNEY v. WALL* (1867), 17 C. P. 474.—CAN.

**1. Note as Only**

Defts., two directors of a co., placed in the hands of C., their secretary, their promissory note for \$8,000, payable

to pltf. on demand, which C. deposited with pltf., having a receipt written under it & signed by their agent, expressing the note to be collateral security for any unretired paper pltf. might at any time hold of the co. Defts. had pleaded as an equitable defence, & desired to prove, that the note was given in consequence of a doubt as to the power of the co. to become parties to a note, & as security only against the want of such power, & until it should be conferred upon them by the legislature, which was done in May, 1859, without loss in the meantime to pltf.:—*Held*: such evidence must be rejected.—*BANK OF CANADA v. MERRITT* (1862), 21 U. C. R. 358.—CAN.

**Pending settlement of suits.]—**To an action upon two notes against the maker by the indorsee of the payee, K., deft. pleaded that the notes were given when he & pltf. & K. were in partnership, & in respect of transactions between deft. & K. as partners & of matters involved in the said partnership, & with the understanding & agreement between deft. & K. & pltf. that the notes were to be held by K. & pltf. merely as evidence of such transactions, etc., & as security



pltf. should pay banker's interest on the sum during W.'s life, & pltf. for the purpose, as he deposed, of effectuating this agreement, signed & gave to W. a promissory note for £500, with interest at 1 per cent., on the understanding that payment of the principal was not to be enforced, but only payment of interest, during W.'s life. After W.'s death his exors. sued pltf. on the note for the £500:—*Held*: although, if there had been a complete gift of the £500, it could not afterwards have formed a consideration for a promissory note, the exors. were entitled to recover, for, as pltf. had not, before the giving of the promissory note, agreed to accept the £500 as a gift, it remained open whether it should be a gift or loan, & the giving the promissory note was conclusive evidence that the parties agreed upon its being a loan; & the ct. could not allow the documentary evidence to be rebutted by the parol evidence given by pltf. on his own behalf.—*HILL v. WILSON* (1873), 8 Ch. App. 888; 42 L. J. Ch. 817; 29 L. T. 238; 21 W. R. 757, L. J.J.

*Annotations*:—*Reid*. *Henry v. Smith* (1895), 39 Sol. Jo. 559. *Mentid*. *Sugden v. St. Leonards* (No. 2) (1876), 34 L. T. 372; *Re Richardson*, *Shillito v. Hobson* (1885), 30 Ch. D. 396.

See, also, Part XI., Sect. 8, *post*.

#### B. In Writing.

**650. Construction — Sufficient assets.]**—An extrix. gave an acceptance for a debt due from her testator, taking an engagement from the drawer, to renew the bill from time to time, until sufficient effects were received from the estate of testator:—*Held*: that meant sufficient effects in the ordinary course of administration, & she had not precluded herself from first applying assets to pay £3,000 to trustees for her own use in discharge of a bond given by her husband before marriage to that effect, before she paid the acceptance.—*BOWERBANK v. MONTEIRO* (1813), 4 Taunt. 844; 128 E. R. 564.

*Annotations*:—*Reid*. *Brown v. Langley* (1842), 4 Man. & G. 466; *Mailard v. Page* (1870), L. R. 5 Exch. 312.

for any sums which might be found due to K. or pltf., on accounts being taken & settlement made between them & deft. as partners, & upon the terms & condition of such an account being taken at or after the dissolution of the partnership: but that the partnership had since been dissolved, & no such account taken or settlement made:—*Held*: plea bad, for it admitted a good consideration for the notes, & did not allege expressly that they were not to be sued upon.—*STULTZMAN v. YEAGLEY* (1872), 32 U. C. R. 630.—CAN.

#### PART VIII. SECT. 4. SUB-SECT. 1.—B.

**n. Whether note controlled by agreement.]**—Deft., F., & B. applied to pltf., J., a broker, to raise some money required by B., who had an asset due from A. amounting to \$504. Pltf. obtained the sum required by discounting a note for \$260, made by deft. to the order of B., indorsed by him to pltf. Contemporaneously with the note a memorandum was signed by pltf., deft. & B. as follows: "A note received from F. for \$260, the conditions of which are that said note is given & to be paid by the first dividend of the estate of A., & if the first dividend does not amount to \$260, the balance shall be paid on the day of maturity of said note, so that B. shall not be called on to pay any money whatever to

protect said note, & that the amount of B.'s account be transferred to J. & to be held by him as collateral for said note's payment, & he alone to draw said dividend & place to credit of said note for \$260, & the transfer made by B. to J. is to be transferred to F. when J. has received in full the sum of \$504." Pltf. retired the note & sued deft. for the amount:—*Held*: the agreement did not control the note so as to alter its character as a promissory note between the parties & prevent pltf. from recovering.—*JENKINS v. BOSSOM* (1880), 1 R. & G. 540.—CAN.

**o. — Maker not to be personally liable.]**—A promissory note granted by A. as the disponent & assignee to the funds & effects of B., was given to C., a creditor of B., & C. delivered to A. a letter setting forth that A. was not to be personally liable for the note, but only to the extent of the funds of B. realized by him:—*Held*: in respect that A. had undertaken no personal liability independently of the funds of B., & that there was no proof that he had realized any funds, a charge in the note, with the view of rendering him personally liable, was incompetent.—*HUGHSON v. CULLEN* (1857), 30 Sc. Jur. 135.—SCOT.

**p. — Agreement setting out consideration.]**—To an action on promissory notes defts. pleaded that pltf. was not a holder for value. Defts.

**651. — Sale of effects.]**—Deft. drew certain bills of exchange as surety for H., the acceptor. By a deed to which H., deft., pltf., & B. were parties, H. conveyed his lease, fixtures, & effects to B., upon trust to sell same & pay to pltf. a debt due to them from H. & also the bills in question. The deed also contained a proviso that the premises should be sold, & the proceeds applied to the purposes specified in the deed, before any proceedings should be had on the bills against deft. The trustee, with the knowledge of deft., omitted to take possession under the deed, & in the meantime a commission of bkpey. issued against H., under which his effects were sold by the assignees:—*Held*: the proviso in the deed did not in the circumstances operate as a bar to pltf.' right to sue deft. upon the bills.—*LANCASTER v. HARRISON* (1830), 6 Bing. 726; 4 Moo. & P. 561; 8 L. J. O. S. C. P. 288; 130 E. R. 1160.

**652. — To renew—Once only.]**—H., being joint owner with deft. of estates in Barbice, advanced to the latter large sums on account of deft.'s share of the liabilities in respect of those estates, & received on account thereof deft.'s acceptance for £3,000 on the following terms, contained in a letter written by deft. to him: "Should the crops (of the estates) not come forward in time to provide for these notes, I shall expect to have them renewed for such period as may be found necessary from the condition of the properties." The crops being & still continuing unproductive, the bills were renewed on three several occasions; but ultimately H. refused to renew further, & pltf., who were indorsees of H., with notice of the agreement, brought an action:—*Held*: they were entitled to recover, as the agreement stipulated for one renewal only.—*INNES v. MUNRO* (1847), 1 Exch. 473; 17 L. J. Ex. 71; 154 E. R. 201.

*Annotation*:—*Distd*. *Helron v. Morgan* (1881), 44 L. T. 182.

**653. — Application for renewal.]**—Deft. accepted pltf.'s draft at 6 months, & pltf.

signed an agreement with W., agent of the payee of the note, stating its consideration to be the sale of a stallion horse, to be held for defts. W. guaranteed the stallion to foal 50 per cent. of the mares bred to him. It was found on the facts that defts. signed the notes with a knowledge of the nature of the transaction:—*Held*: they were liable thereon, & if they signed without reading the agreement they were grossly negligent & not entitled to the ct.'s protection.—*DART v. QUARD* (1906), 8 O. W. R. 662.—CAN.

*that note for only.]*—Pltf. brought an action to recover from defts., W. & E., money paid to retire an accommodation note for \$638.17, made by pltf. in favour of W., & indorsed by W. & E., & negotiated by E., dated Jan. 9, 1874, the declaration containing the common counts & a count on a guarantee. Deft. W. admitted signing a memorandum dated May 10, 1873, certifying that a note for \$778 of that date was made by pltf. for accommodation, that he W., was to pay same without recourse to pltf. W. admitted also that the origin of the note for \$638.17 was a note for \$778 or \$780, but thought that the memorandum referred to a different note from the one last mentioned. The jury found that the \$778 note referred to in the memorandum was the origin of the transaction out of which the suit arose, the



**Sect. 4.—Agreements and conditions affecting delivery—negotiation: Sub-sect. 1, B.; sub-sect. 2.]**

agreed in writing to renew the bill, if circumstances should prevent debt. from meeting it at maturity. Debt. made no application for renewal during the currency of the bill, but on pltf.'s presenting it for payment shortly after it became due, he claimed to have it renewed according to the agreement, circumstances having in fact prevented him from meeting it:—*Held*: debt. was not bound to apply for a renewal during the currency of the bill, but it was sufficient if he did so within a reasonable time after it became due.—**MAILLARD v. PAGE** (1870), L. R. 5 Exch. 312; 39 L. J. Ex. 235; 23 L. T. 80.

*See, also*, Nos. 621 *et seq.*, *ante*; No. 657, *post*.

—— **Validity of bill or note given in substitution or renewal.]—See Part X., Sect. 2, *post*.**

**Discharge by renewal of bill or note or by giving fresh bill or note.]—See Part XIV., Sect. 11, *post*.**

**Redeemable at any time.]—H.** advanced money to P., & by agreement was to receive the whole amount due from P., in acceptances of the D. Co. to C.'s drafts at 6, 12, & 18 months, "but if not sufficient bills at such dates are received from the D. Co., then the balance to be made up in similar bills at 12, 24, & 36 months, upon which 10 per cent. interest shall be payable, such last-mentioned bills to be redeemable at any time":—*Held*: the word redeemable implied that P. might take up the last-mentioned bills at any time, irrespective of the other debts due by him to H. *Semble*: P. might take up any one or more of the bills at any time (**LORD CRANWORTH, C.**).—**HILLS v. PARKER** (1868), 14 L. T. 107, H. L.

**655. — Credit.]—A.** wrote to B. saying: "I have been requested to grant a credit in favour of C., & I consent to do so, & authorise you to draw upon me for C.'s account, for £15,000 in drafts at 3 months' date, which I engage to have

renewed three times by drafts of the same date, making the currency of the credit 12 months in all, provided you give me an undertaking to furnish me with funds to pay each set of bills previous to maturity, in order to keep me out of cash advance." B. answered, copying & adopting the letter, but after the last word, "advance," adding, "for the 12 months." In the next part of B.'s letter was the following sentence: "We take note of the credit, & subscribe to the engagement of renewing three times our drafts, with furnishing you with the funds to pay the drafts renewed, in order to keep you out of cash advance for 12 months." Bills were drawn & renewed under the agreement. The last renewals became due a few days after the expiration of 12 months from the date of B.'s letter:—*Held*: the agreement was, in substance, to "pay each set of bills previous to maturity," & B. had not satisfied it by keeping A. out of cash advance for the first bills & the first & second renewals, but was bound to keep A. out of cash advance for the last-renewed bills.—**ENGLISH & FOREIGN CREDIT CO. (PROPRIETORS) v. ARDUIN** (1871), L. R. 5 H. L. 64; 40 L. J. Ex. 108, H. L.

*Annotation*:—**Consd. Re Imperial Land Co. of Marseilles, Harris' Case** (1872), 7 Ch. App. 587.

**656. Payment by instalments.]—It** is not competent to the maker of a promissory note, in an action by the payee, to give in evidence an oral agreement to vary or contradict the express contract upon the face of the note, but a contemporaneous agreement in writing may be adduced for that purpose.—**BROWN v. LANGLEY** (1842), 4 Man. & G. 466; 5 Scott, N. R. 249; 12 L. J. C. P. 62; 134 E. R. 192.

*Annotations*:—**Reid. Webb v. Salmon, Webb v. Spicer** (1849), 14 L. T. O. S. 86; **Rayner v. Fussey** (1859), 28 L. J. Ex. 132.

**657. To renew—Overdue bill.]—Defts.** accepted a bill payable at 4 months upon a written undertaking that, if at the maturity of the bill they had not been paid certain money due to them on the return of a certain ship, the drawer would renew the bill. More than 4 months elapsed after

£638.17 note being simply a renewal of the £778 note:—*Held*: the evidence of the memorandum was admissible.—**O'CONNOR v. WALLACE** (1875), 1 R. & C. 92.—**CAN.**

**r. — Satisfaction otherwise than in money.]—In** an action on a promissory note payable on demand the defence was that on the same day that the note was passed pltf. gave debt. a written undertaking to take the amount out in bills, debt. being a nailer. Pltf., on the other hand, said the two transactions were quite distinct & that the agreement was expressed to be in consideration of the note & to take bills to the same amount in the course of the summer:—*Held*: pltf. was entitled to judgment on the note at once.—**BURT & ALEXANDER v. DINWOODY** (1841), Bluet, 218.—**I. of M.**

**Varying time for payment.]** In an action by the drawer & payee against the acceptor of a bill of exchange, dated Dec. 10, & payable to pltf.'s order 3 months after date, debt. pleaded that by a contemporaneous agreement in writing the money was not to be paid until the expiration of 6 months from the date of the bill. Averment, that the agreement & the acceptance constituted & were one & the same contract. Replication, that

the agreement mentioned in the plea is one & the same agreement, & was & is in the words & figures following, etc. It then set out a mtge., dated Dec. 9, of a share in a claim for £150, with a proviso that should debt. repay the £150, together with interest, "within 6 months from the date thereof," the agreement should be void:—*Held*: if it sufficiently appeared on the record that the loan was the sole consideration of the bill, & that there was only one transaction, it would be a good defence at law.—**BUCKLEN v. KAY** (1865), 4 N. S. W. S. C. R. 326.—**AUS.**

**t. — Not to sue for limited**—A collateral covenant not to sue for a limited time on a promissory note does not suspend the right of action on the note & cannot be pleaded in bar to an action on the note.—**SOMASUNDARAM CHETTIAR v. NARASIMHA CHARIAR** (1905), 1 L. R. 29 Mad. 212.—**IND.**

**a. — Note not to be negotiable.]**—D. gave C. two promissory notes, payable to C. or bearer, having indorsed on them contemporaneously with their making, & in the case of one of them on the edge of the paper, the words "the within notes not to be sold," which indorsement the evidence showed formed part of the contract between

the parties:—*Held*: whether the words of the above indorsement were underwritten or indorsed was immaterial, they being part of the original contract, & the effect of it was to prevent C. disposing of the notes to a holder for value, so as to preserve to the makers all defences & equities, as against the first holder & volunteers under him, thus qualifying their negotiability.—**SWAISLAND v. DAVIDSON** (1883), 3 O. R. 320.—**CAN.**

**656 i. Payment by instalments.]—Deft.** signed a promissory note in pltf.'s favour, & entered into a contemporaneous written agreement to pay by instalments. The agreement not provide that on failure to pay one instalment the whole amount should become due, nor that debt. should sign a renewal note for the balance on paying an instalment:—*Held*: even supposing, as pltf. contended, that there was a failure to pay the whole of the first instalment, & to tender to sign a renewal note, these facts did not entitle pltf. to claim provisional sentence on the whole amount of the note.—**SACKVILLE-WEST v. BOOYSEN & DE LANGE** (1913), E. D. L. 405.—**S. AF.**

**657 i. To renew.]—Semble**: an agreement in writing to renew, contemporaneous with the making of a promissory

the maturity of the bill, & the money had not been paid to defts., but the bill had not been actually renewed:—*Held*: defts. were liable in an action upon the bill by an indorsee.—*HEIRON v. MORGAN* (1881), 44 L. T. 182, D. C.

*See, also*, Nos. 621 *et seq.*, 652, 653, *ante*.

**658. Oral evidence to identify note.]**—To an action on a promissory note, payable to pltf. or order on demand, with interest at 5 per cent., deft. pleaded specially, to the effect that pltf. having agreed with him for the purchase of one of several shares in a business in which he was engaged with others, an agreement in writing was entered into between them that the amount should be £3,867 3s. 9d., in part payment of which pltf. would take yearly deft.'s share of the profits of the concern. The agreement, as set out in the plea, contained a memorandum that a note of hand had been given for the amount, bearing interest at 5 per cent., & there was a clause that, so long as deft. should perform the conditions of the agreement, pltf. would not call upon him, at any future period, suddenly for the balance of the note. The note referred to in the agreement contained, in the body, a stipulation which vitiated it, *viz.*, that pltf.'s amount of profit should be applied yearly to the liquidation of it. The plea averred (*inter alia*) that the note sued on was substituted, with pltf.'s consent, for that mentioned in the agreement, & was subject to its conditions, & further, that deft. performed his part of the agreement, yet pltf., notwithstanding, required him to pay the balance of the note suddenly, & before a reasonable time had elapsed. Pltf. replied, that deft., of his own wrong, neglected & refused to pay the note, & that he did not call on him for payment suddenly, & before a reasonable time had elapsed:—*Held*: (1) deft. might prove by oral evidence, that pltf. assented to the substitution of the note sued on for that mentioned in the agreement; (2) pltf. was entitled to a verdict for the interest due upon the note, though the jury should think that he was not entitled to the principal sum, on the ground of his having called for payment before a reasonable time had elapsed.—*BAYLIS v. RINGER* (1836), 7 C. & P. 691.

**659. Pleading—Need not allege writing.]**—To a declaration on a bill of exchange by the drawer & payee against the acceptor, deft. pleaded that he accepted the bill on a condition then

agreed on between him & pltf., *viz.* that in a certain event, which occurred, pltf. would renew the bill. The plea did not aver that the agreement was in writing:—*Held*: as the agreement would not be a defence unless it was in writing, the plea must be construed as alleging a written agreement, & the plea was good.—*YOUNG v. AUSTEN* (1869), L. R. 4 C. P. 553; 38 L. J. C. P. 233; 20 L. T. 396; 17 W. R. 706.

*Annotations*:—*Consd.* *Abroy v. Crux* (1869), L. R. 5 C. P. 37. *Distd.* *Denton v. Peters* (1870), L. R. 5 Q. B. 475. *Consd.* *Corkling v. Massey* (1873), L. R. 8 C. P. 305. *Refld.* *Maillard v. Page* (1870), L. R. 5 Exch. 312; *New London Credit Syndicate v. Neale*, [1898] 2 Q. B. 487.

#### SUB-SECT. 2.—SUBSEQUENT AGREEMENTS AND CONDITIONS.

**660. In writing—To indemnify.]**—A receiver of rents of an estate, to a share of which a married woman was entitled, having in his hands money due to her, by the direction of the husband, accepted a bill on the faith of that fund, drawn by a creditor of the husband for money lent to him. Before the bill became due the husband & wife gave a joint direction to the receiver to pay over the money to a third person, which he did. When the bill became due the acceptor refused to pay it, unless the drawer would indemnify him against the claim of the husband & wife to have the money paid according to their order. An indemnity was given, but the acceptor still refused to pay:—*Held*: the drawer could not maintain an action on the bill, as it would only lead to a circuitry of action, as the acceptor, being bound to pay the money according to the order of the husband & wife, might recover it back by suing on the agreement to indemnify.—*CARR v. STEPHENS* (1829), 9 B. & C. 758; 4 Man. & Ry. K. B. 590; 7 L. J. O. S. K. B. 336; 100 E. R. 281.

*Annotation*:—*Refld.* *Charles v. Alton* (1854), 2 C. L. R. 1764.

**For payment by instalments—No consideration.]**—Deft. gave to J. a promissory note, whereby he promised to pay J. or order on demand, £520 with interest, at the rate of 5 per cent. *per annum*. Afterwards a written agreement was entered into by deft. & J., that the principal sum of £520 should be repaid by quarterly instalments of £25 with interest. In an action brought after the death of J., by his administratrix,

note, can be set up as a defence to an action on the note.—*ORSMOND v. STEYN* (1901), 18 S. C. 1.—S. A. F.

**657 II. —.]**—*Held*: in an action upon a promissory note to which a defence of a written agreement to renew is pleaded, deft. is entitled to go to trial upon such defence.—*CUSHING v. HORNER*, 32 W. L. R. 588; 9 W. W. R. 289; 25 D. L. R. 824.—CAN.

**b. — Construction.]**—On Aug. 29 deft. R. made a note of that date for \$700, at 18 months, in favour of D., & for his accommodation, which R. gave to D. without any restriction as to its use. D. indorsed & handed it to pltf.; & at the same time gave pltf. his D.'s own note, of the same date at 3 months, taking from pltf. the following receipt: "Received from R. a note indorsed by D., payable 18 months after date, for \$700, which note is given me only as collateral security for the payment of certain note indorsed by me for D., & when said note is fully paid, I agree to return same." On Sept. 24

a statement of account took place between pltf. & D., when D. took up the note of Aug. 29, by giving pltf. another note for the like amount at 3 months:—*Held*: the true construction of the agreement was, that D. should have 18 months, or so much thereof as pltf. chose to give him, in which to pay off the \$700; & that D.'s note might be renewed from time to time, so long as payment was not extended beyond the 18 months: & in the circumstances the note of Sept. 24 could not be deemed to have been taken as a payment of the note of Aug. 29.—*HEALY v. DOLSON* (1885), 8 O. R. 691.—CAN.

provided for a payment by notes, & contained a provision that each note was to be renewed once, the renewal to be of the like currency as the previous note; there was a subsequent provision that the notes were to be renewed as C. should require:—*Held*: the agreement was for one re-

newal by notes having the same currency as the original notes, or renewals as often as C. should require, so that the total time of currency should not exceed the limit fixed by the prior provision of the agreement.—*MACFARLANE v. KINROSS & GRAHAM* (1884), 3 N. Z. L. R.

#### PART VIII. SECT. 4, SUB-SECT. 2.

**d. To pay by instalments.]**—By an agreement, payment of notes was dependent upon receipt by deft. of payments agreed to be made to him by persons to whom he had sold property on which C. had an option. The notes had been delivered by deft. to C., who indorsed them to pltf.:—*Held*: pltf. had notice that the notes were not to be payable otherwise than out of instalments of purchase money which to his knowledge might never be paid, & he took the notes subject to all equities to which C. was subject.—*HUFF v. BURTON* (1918), 14 O. W. N. 807.—CAN.



## 92 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### *Secl. 4.—Agreements and conditions affecting delivery and negotiation: Sub-sects. 2 & 3.]*

to recover the whole amount for which the note was given:—*Held*: the subsequent agreement between debt. & J. was no defence, inasmuch as it was not founded on any valuable consideration.—*McMANUS v. BARK* (1870), L. R. 5 Exch. 65; 39 L. J. Ex. 65; 21 L. T. 676.

—*Consd. Hookham v. Mayle* (1906), 22 T. L. R. 241.

### 662. — Construction—Extent of security.]—

Deft. was the acceptor of an accommodation bill, which R., the drawer, indorsed to pltf., in whose hands the drawer had a quantity of port wine. Upon the bill being dishonoured, the drawer substituted in its place three other bills, one of which was paid when due, the others were not. Pending the transaction, the debt of the drawer of the accommodation bill to pltf. became £300, for which he accepted bills at various dates. After the bills, which were substituted for the one first indorsed to pltf., were due & unpaid, & before any of the bills given to pltf. for the £300 became due, R. by letter informed pltf. that they might sell the wine in their possession, to protect themselves, & that he would give them one hundred dozen of Madeira, over which they should have the same power. In an action against debt., acceptor of the original bill, for the recovery of that portion which had not been paid, viz., the amount of the two bills declared on:—*Held*: (1) the power to sell the wines in their possession, given to pltf. after those bills became due, was intended to protect them from loss on the bills then running, & did not extend as a security against a loss upon bills which were due & unpaid before such power of sale was given; (2) debt. was liable.—*GREENWOOD v. BARWISE* (1836), 5 L. J. C. P. 339.

### 663. Not to sue for limited time.]—

In *assumpsit* by the payee of two promissory notes, for £200 & £140, against the maker, debt. pleaded in bar that, after the notes became due, it was mutually agreed (see No. 664, *post*), by pltf., debt., & A., that A. should pay to pltf. £25 per annum by quarterly payments, & as long as A. so paid, the right of action on the notes should be suspended, & that A. had hitherto made the quarterly payments:—*Held*: the plea offered no answer, inasmuch as, if pltf. were barred of his action on the notes for any period, his right of action would by law be extinguished altogether, which appeared not to be the intention of the agreement, & the agreement must be construed as giving debt. merely a right of action for breach thereof, if pltf. sued while the payments were continued.—*FORD v. BEECH* (1848), 11 Q. B. 852; 17 L. J. Q. B. 114; 11 L. T. O. S. 45; 12 Jur.

a. In being largely indebted to [tf.'s firm entered into an agreement which contained the following clause: "The party of the second part further agrees that he will from time to time renew said notes for the balance that is due after applying any moneys received by him." In the margin was written the memorandum: "This clause is hereby left. & witnessed by one N. Debt. contended he was induced to sign the memorandum of cancellation by

representation:—*Held*: as the clause itself was unreasonable there should be judgment for pltf. in his action upon the notes.—*PICOTT v. HEDRICK* (1918), 15 O. W. N. 123.—CAN.

1. — Limiting liability of acceptor.—*Made after transfer*—*Whether*—To an action against acceptor of a draft drawn by & Co., & indorsed to pltf., debt. pleaded an agreement on the part of the drawers that debt. should be liable as exor. of P.:—*Held*: a letter written by the drawers after the draft

310; 116 E. R. 693, Ex. Ch.; *revsq.* S. C. (1846), 11 Q. B. 842.

*Annotations*:—*Consd. Gibbons v. Vouillon* (1849), 8 C. B. 483; *Overton v. Harvey* (1850), 9 C. B. 324; *Belshaw v. Bush* (1851), 11 C. B. 191; *Bottomley v. Nuttall* (1858), 5 C. B. N. S. 122; *Frazer v. Jordan* (1858), 8 E. & B. 303. *Distd. Foley v. Fletcher* (1858), 28 L. J. Ex. 100. *Co.* *Newington v. Levy* (1870), L. R. 6 C. P. 180. *Di Slater v. Jones* (1873), L. R. 8 Exch. 186. *Reid. Webb Spicer* (1849), 13 Q. B. 894; *Moss v. Hall* (1850), 5 Exch. 46; *Owens v. Pizey* (1862), 7 L. T. 350; *Ray v. Jones* (1865), 34 L. J. C. P. 306. *Mentd. Roberts v. Campbell* (1847), 10 L. T. O. S. 183; *Orme v. Galloway* (1854), 9 Exch. 544; *Rayner v. Fussey* (1859), 28 L. J. Ex. 132; *Walker v. Nevill* (1864), 3 H. & C. 403; *Coddington v. Paleologo* (1867), L. R. 2 Exch. 193; *Baker v. Ingall*, [1912] 3 K. B. 106; *Glamorgan Coal Co. v. Glamorgan-shire Standing Joint Com.*, *Powell Duffryn Steam Coal Co. v. Same*, [1915] 1 K. B. 471; *Re Sutro & Hellbut*, *Symons*, [1917] 2 K. B. 348.

664. — — — — —.]—The payee of two promissory notes being about to sue the maker, the brother of the maker agreed to pay £200 to the payee, in trust for E., or £6 5s. per quarter, so long as the £200 should be unpaid, so that the notes should be suspended & rendered inoperative so long as the brother continued to pay the £6 5s. a quarter to the payee, & on payment of the £200 all claim on the notes to cease, & same to be given up. The brother not having paid the £6 5s. to the payee, for two quarters, but having paid the sums to E., the *cestui que trust*, as the latter admitted, the payee brought an action upon the notes against the maker, & the Ct. of Exchequer Chamber decided that the agreement could not be pleaded in bar to the action upon the notes, but might be the subject of a cross action (see No. 663, *ante*). In a suit for specific performance of the above agreement & for an injunction to restrain the action on the notes:—*Held*: (1) the agreement must be construed as a contract by the brother, to provide for E. the annuity of £25, or the gross sum of £200, as a substitute for the two notes, & by the payee that the two notes should thenceforth be only a security for the performance of such contract, & not as an agreement, under which the original right of the payee against the maker would revive on any failure of the quarterly payments by the brother; (2) the brother was entitled to the specific performance of the agreement in equity, not on the ground of the circuitry of cross actions which the rule of law occasioned, but on the ground that the ct., by modifying its decree, could give to all parties the benefit of the agreement, whilst the ct. of law, being unable so to modify its judgment, could not give to one party the benefit of the agreement without depriving another party altogether of such benefit.—*BEECH v. FORD* (1848), 7 Hare, 208; 68 E. R. 85, L. C.

665. Oral—Between indorser & indorsee—Sale of bills.]—Declaration on three bills of exchange for £100 each, drawn by debt. Plea, that after

had been transferred for value, to pltf., was not receivable as evidence.—*CAMPBELL v. MCKAY* (1892), 24 N. S. R. 404.—CAN.

2. Oral—To release maker.]—*GALE v. COCKBURN* (1864), 8 C. L. J. O. S. 341.—CAN.

665 i. — Between indorser & indorsee—Releasing indorser.]—In an action by indorsee against indorser of a note given for the price of land, debt. may show that he was discharged from his liability by a parol agreement that



the bills become due, pltf. had notice that the acceptors were unable to pay, & then agreed that if deft. would sell him the bills for £200 he would run the risk of the insolvency of the acceptors, & take same on their credit, & not look to deft. :—*Held*: the plea was good.—**KIMBERLEY v. SILK** (1843), 1 L. T. O. S. 386.

### SUB-SECT. 3.—EFFECT OF NEGOTIATION.

Negotiation & transfer generally, *see* Part XI., *post*.

**666. Action by indorser against holder—Agreement between indorser & indorsee—Proceeds to be paid to indorser—Bill transferred by indorsee to holder.**—If A. indorse a bill, drawn in his favour & accepted, to B. in order that he may raise money for A. by negotiating it, & B. gives it to C. who puts it into the hands of D. without consideration, 2 years after the bill is due, A. may recover back the bill from D. in trover.—**GOGGERLEY v. CUTHBERT** (1806), 2 Bos. & P. N. R. 170; 127 E. R. 589.

*Annotations*:—**Apld.** *Bell v. Ingestre* (1848), 11 L. T. O. S. 200. *Refd.* *Evans v. Kymer* (1830), 1 B. & Ad. 528.

**667. Action by indorsee against drawer—Agreement between acceptor & drawer—Acceptor to pay bill when due—Plaintiff with notice.**—In an action by the indorsee against the drawer a plea alleging that deft. was damnified in consequence of the promise made by the acceptor at the time of the indorsement to provide funds for the payment of the bill when due & to indemnify deft. & bear him harmless, of which pltf. had notice, is bad.—**FITZGERALD v. WILLIAMS** (1839), 6 Bing. N. C. 68; 8 Scott, 271; 9 L. J. C. P. 41; 133 E. R. 27.

*Annotation*:—**Consd.** *Carter v. Flower* (1847), 16 M. & W. 743.

if deft. paid the taxes chargeable against the land pltf. would relieve him from liability as indorser, if made subsequent to the indorsement.—**MOORE v. GROSVENOR** (1890), 30 N. B. R. 221.—CAN.

**k. — Suspending right of action indefinitely.**—To a declaration on a promissory note deft. pleaded that before the note became due it was agreed between pltf. & deft. that, in consideration that deft. would join with pltf. & B. in making a joint & several promissory note for £540 to R. pltf. would not sue upon the note in his favour so long as deft. remained liable on the note for £540 to R. & that the note was still in force:—*Held*: a bad plea.—**MCLEAN v. RAMSAY** (1879), 2 N. S. W. S. C. R. N. S. 183.—AUS.

**l. — As to satisfaction—Bad for uncertainty.**—In an action by the drawee of two accommodation drafts against the drawer for the amount of the drafts paid to the holder thereof, the drawer alleged that an agreement had been made between pltf. & himself whereby pltf. was to have the use of deft.'s motor car in consideration of pltf. paying subsequently for a new motor car for deft. & that the drafts in question had been paid by pltf. in pursuance of this agreement:—*Held*: the agreement was too uncertain to be enforced.—**CALHOUN v. WI** (1914), 28 W. L. R. 236.—CAN.

**m. — For renewal—Evidence of.**—In an action brought on a note & open account, deft. pleaded that he had sent in a renewal note to pltf. which they retained in their possession & which had not yet matured: pltf. replied that they had never agreed to renew:—*Held*: deft. was bound, unless on acceptance by pltf., to call & take away the renewal note, & the mere fact of pltf. not returning it could not be construed into an agreement to renew.—**LYMAN v. C** (1857), 1 L. C. J. 285.—CAN.

maturity of deft.'s note to pltf. for \$263.75 deft. gave pltf. a renewal note for \$150 & promised to pay the balance in cash next morning, which pltf. said was all right; but on the same day the original note was sued, pltf. still holding the renewal note, which was a negotiable instrument:—*Held*: pltf. could not recover on the note sued on.—**MURRAY v. GASTONGUAY** (1880), 1 R. & G. 319.—CAN.

### PART VIII. SECT. 4, SUB-SECT. 3.

**n. Action by indorsee against drawer of bill between drawer & indorsee—Drawer entitled to stop payment in certain event—Plaintiff not holder in due course.**—A condition attached to the delivery of a cheque, that the drawer should be entitled to stop payment unless he received

**668. — Agreement between drawer & payee—Cheque not to be indorsed—Indorsement in breach of agreement.**—S. drew a cheque payable to C., at the request of R., a company promoter, in order that the B. Co. might go to allotment on the minimum required capital being raised. C., otherwise M., was an existing person, but it was never intended that he should indorse the cheque, & it was only drawn to induce the co. to accept an application for shares in his name. The B. Co. indorsed the cheque in C.'s name & sued S. on it:—*Held*: the cheque was not as between S. & C. without value, & C., as the holder of a cheque to his order for value, had transferred it to the co. for value, & they were entitled to recover against S.—**EDINBURGH BALLARAT GOLD QUARTZ MINE CO., LTD. v. SYDNEY** (1891), 7 T. L. R. 656.

, *further*, Part XI., Sect. 3, *post*.

**669. Action by indorsee against acceptor—Agreement between acceptor & drawer—Note not to be enforced except on terms—Plaintiff without notice.**—In an action by the indorsee against the acceptor of a promissory note for £100, he pleaded that, by agreement between him & the drawer, the note was not to be enforced except on certain terms, which the drawer had not complied with, & that pltf. had received the note without consideration. Pltf. entered a *nolle prosequi* as to all the amount except £40, for which he had given value to the drawer, & had a verdict for that sum. It did not appear that pltf. was cognizant of the agreement between deft. & the drawer:—*Held*: deft., who had been arrested for the whole amount of the note, was not entitled to costs under 43 Geo. 3, c. 46, s. 3.—**EDWARDS v. JONES** (1837), 2 M. & W. 414; 5 Dowl. 585; Murp. & H. 92; 1 Jur. 454; 150 E. R. 818.  
*Annotation*:—**Mentd.** *Robinson v. Powell* (1839), 5 M. & W. 479.

**670. — Set-off to be allowed against bill.**—To an action on a bill of exchange for £20,

a specified time the cheque of a third party to meet it, may be proved by parole, & is effectual against an indorsee who is not a holder in due course.—**SEMPLE v. KYRIE** (1902), 4 F. (2d. of Sess.) 421; 39 Sc. L. R. 304.—SCOT.

**669 l. Action by indorsee against acceptor—Agreement between drawer & indorsee—Limiting liability of plaintiff without notice.**—To an action against deft. as acceptor of a draft drawn by R. & indorsed to pltf., deft. pleaded an agreement on the part of the drawers that deft. should be liable only as exor. of R.:—*Held*: the deft. should have been struck out, it being that pltf. was a holder for value without notice of the agreement.—**CAMPBELL v. R** (1892), 24 N. S. R. 404.—CAN.

**Action by indorsee maker—Agreement between maker & payee—That note to be negotiated at particular bank.**—Deft. made a note for the accommodation of J., the payee, upon certain conditions one of which was that it should only be negotiated at a particular bank. J. negotiated the note with another bank. In an action by an indorsee against deft.:—*Held*: the conditions were equitable attaching to the note, & pltf. could not recover.—**MACARTHUR v. MACDOWALL** (1892), 1 Terr. L. R. 345; *affd.* (1893), 23 S. C. R. 671.—CAN.

*Sect. 4.—Agreements and conditions affecting delivery and negotiation: Sub-sects. 3 & 4. Part IX. Sect. 1.]*

drawn by J., & indorsed to pltf., & accepted by deft., deft. pleaded, that, before & at the time of the indorsement, J. was indebted in £1 13s. 1d. to deft., & that J. held the bill on the terms that the sum so due should be set off against the amount of the bill, & that J., in fraud of deft., & in collusion with pltf., indorsed the bill to them, who sued as agents merely of J.:—*Held*: the plea was not issuable.—*MAYHEW v. BLOFIELD* (1847), 1 Exch. 469; 17 L. J. Ex. 28; 154 E. R. 199.

**671. Holder to deliver bill to drawer—Indorsement in breach of agreement.]**—In an action by indorsee against acceptor, deft. pleaded that the bill was accepted for the accommodation of the drawer, & on the terms that, if he should negotiate it, the holder should deliver it to the drawer before or when it became due, to enable him to take it up, & that the holder should not retain it after it became due. Averment that the drawer indorsed it to pltf., who received it on those terms. Replication, *de injuriâ*:—*Held*: the replication was correct, inasmuch as the plea admitted that some interest in the bill was transferred to pltf., & did not amount to an argumentative denial of the indorsement, but only to an excuse for not paying the bill to pltf.; though admitted to be holder & *prima facie* entitled to sue. *ROBINSON v. LITTLE* (1848), 9 Q. B. 602; 18 L. J. Q. B. 29; 12 L. T. O. S. 291; 13 Jur. 149; 115 E. R. 1404.

**672. ——— Disputes to be determined by tribunal in Paris—Indorsement in fraud of agreement.]**—Where there was an agreement between a merchant in Paris & a merchant in London that the latter should accept bills of exchange against the net proceeds of goods consigned to him for sale, & that all disputes relating to such bills should be determined by a tribunal in Paris:—*Qu.*: whether, where proceedings had been commenced on such bills, in the tribunal in Paris, & they were indorsed in fraud of such agreement, & to prevent the merchant in Paris from establishing his rights in respect thereof, an answer was afforded to an action by an indorsee with notice against the acceptor.—*WILSON v. MARTIN* (1855), 4 W. R. 82.

**673. ——— Agreement between drawer & plaintiff as holder for special purpose—Conditions under which plaintiff received bill—Whether bill delivered to plaintiff as indorsee.]**—Indorsee

against acceptor of a bill of exchange. Plea, that the bill was accepted for money due from the acceptor to the drawer, & that, at the time of the acceptance, the drawer was indebted to R. in a larger sum than the acceptance, that the acceptor delivered the bill to the drawer, on account of the sum due from the acceptor to him, that the drawer then indorsed the bill in blank, & delivered it to pltf., as the agent of R., & on the terms that pltf. should deliver it to R., that pltf. took & held the bill as agent only for R., & without giving value for it, & that pltf. would not deliver the bill to R., but wrongfully retained it to his own use, that R. dissented from pltf.'s suing on the bill, & required the acceptor not to pay it to pltf.:—*Held*: the plea amounted to a constructive denial that the bill was delivered to pltf., as indorsee, & was good after verdict. *Qu.*: whether it would have been good upon special demurrer.—*ADAMS v. JONES* (1840), 12 Ad. & El. 455; 4 Per. & Dav. 174; 9 L. J. Q. B. 407; 113 E. R. 884.

*Annotations*:—*Consd.* *Marston v. Allen* (1841), 8 M. & W. 494; *Jones v. Corbett* (1842), 2 Q. B. 828. *Apld.* *Bell v. Ingestre* (1848), 12 Q. B. 317. *Distd.* *Robinson v. Little* (1848), 9 Q. B. 602. *Refd.* *Bromage v. Lloyd* (1847), 1 Exch. 32; *Brown v. De Winton*, *Gay v. Lander* (1848), 6 C. B. 336; *Bank of Bengal v. Macleod* (1849), 5 Moo. Ind. App. 1; *Harmer v. Steele* (1849), 4 Exch. 1.

**674. ——— Agreement between plaintiff & holder for special purpose—Conditions under which plaintiff received bill—Question for jury.]**—Action by indorsee against acceptor of a bill of exchange for £300. Plea denying the indorsement to pltf. The bill was in the hands of A., for the purpose of getting it discounted, & pltf., a creditor of A. for upwards of £200, pressed him for payment. A. told him he would let him have £50, & handing over the bill, told him that if he got it discounted, he might have £50 out of it. On that evidence the jury were told that pltf. was the holder for value to the extent of £50:—*Held*: the question ought to have been distinctly left to the jury, whether pltf. merely received the bill to get it discounted, & in case he succeeded to be allowed £50 out of it, but to return it in case he did not, or whether he was to hold the bill, at all events as a security.—*MERCER v. BARTLETT* (1845), 6 L. T. O. S. 237.

#### SUB-SECT. 4.—HOW ENFORCED.

**675. Immediate parties—Bill to be renewed on payment of interest.]**—*FLIGHT v. GRAY*, No. 624, *ante*.

*r.* ——— *Agreement between makers & agent—Another party to join as maker—Indorsement in fraud of act.]*—Defts., thirteen in number, & one L. formed a syndicate for the purchase of a stallion. The vendor's agent afterwards induced defts. to sign an agreement for the purchase & promissory notes for the price on the representation that he would get L. to put his name also on the notes. Defts. then took possession of the horse & used him for one season & part of

another when he died. Shortly after signing the notes the defts. became aware that L. had refused to sign the notes. They did not ask then for a return of the notes or do anything to indicate that they did not intend to be bound by them, but acted from that time as though the syndicate was composed of themselves alone, ignored L. in the matter & collected & retained the earnings of the horse for themselves until he died. The vendor discounted the notes with pltf. who

proved that they had no notice or knowledge of any fraud or irregularity in obtaining them:—*Held*: pltf. being holders for value without notice of any fraud or irregularity were entitled to recover against defts., notwithstanding the defence set up that they were only to be liable on condition that L. joined with them.—*FIRST NATIONAL BANK v. MCLEAN* (1906), 16 Man. L. R. 32; 1 W. L. R. 538; 3 W. L. R. 227.—CAN.



## PART IX.—CAPACITY AND AUTHORITY OF PARTIES.

### Part IX.—Capacity and Authority of Parties.

#### SECT. 1.—IN GENERAL.

See 1882 Act, s. 22.

See, generally, AGENCY, Vol. I., pp. 309-316, 643-648; COMPANIES; CONTRACT; HUSBAND & WIFE; INFANTS & CHILDREN; LUNATICS & PERSONS OF UNSOUND MIND, ETC.; PARTNERSHIP; SHIPPING & NAVIGATION.

**676. Allen.]**—An alien, to whom a bill of exchange, drawn on England by a British subject detained prisoner in France during war, payable to another British subject detained there, is there indorsed by the latter, may sue on it in this country after the return of peace.—*ANTOINE v. MORSHEAD* (1815), 6 Taunt. 237; 1 Marsh. 558; 128 E. R. 1025.

*Annotations:*—*Distd. Willison v. Patteson* (1817), 1 Moore, C. P. 133. *Reid. Porter v. Freudenberg, Kreglinger v. Samuel & Rosenfeld, Re Merten's Patent*, [1915] 1 K. B. 857; *Tingley v. Müller*, [1917] 2 Ch. 144; *Re Ferdinand, Ex-Tsar of Bulgaria* (1920), 65 Sol. Jo. 7. *Mentd. Ogden v. Peele* (1826), 8 Dow. & Ry. K. B. 1; *Rodriguez v. Speyer* (1918), 88 L. J. K. B. 147.

See, generally, ALIENS, Vol. II., pp. 147-169.

#### PART IX. SECT. 1.

**a. Agents—Manager & Secretary-treasurer.]**—Deft. co. were sued on promissory notes. The notes were signed by M. president of deft. co., & W. secretary-treasurer, in accordance with the by-laws of the co. M. had given one consolidated note of his own in respect of the same debt, & on his death, pltf. sought to make his estate liable on it:—*Held*: there was on the facts neither absence of authority to make the notes on behalf of the co. nor knowledge on pltf.'s part of such want of authority & the co. were liable on the balance due.—*BALDWIN IRON STEEL WORKS, LTD. v. DOMINION CARBIDE CO.* (1903), 2 O. W. R. 6, 170.—CAN.

**b. — President of bank—To certify cheque.]**—*BANQUE DU PEUPLE v. BANQUE D'EXCHANGE* (1892), 23 C. L. J. N. S. 391; 10 L. N. 562.—CAN.

**c. — President of insurance company.]**—*JONES v. EASTERN TOWNSHIPS MUTUAL FIRE INSURANCE CO.* (1887), M. L. R. 3 S. C. 413.—CAN.

**d. — Secretary—Authority to accept.]**—Bills directed to the secretary of a co., & so describing him, are in effect drawn on the co. & authorise him to accept on their behalf, if he has authority to bind them; & it is unnecessary to put the seal of the co. to the acceptance.—*GILBERT v. MCANANY* (1869), 28 U. C. R. 384.—CAN.

**e. — Storekeeper—Implied authority.]**—D. was clerk or agent for deft. in keeping a store, & deft. had once sanctioned his purchasing certain goods:—*Held*: D. had no implied authority to sign deft.'s name to negotiable paper.—*HEATHFIELD v. VAN ALLEN* (1858), 7 C. P. 346.—CAN.

**f. — Under power of attorney—Evidence of authority.]**—J. B. carried on business under the name of B. & Co.; on his insolvency his wife purchased his estate from his assignee, & authorised him by power of attorney to manage the business, & to make promissory notes in & about it. Being pressed for payment of notes which he had given for a debt due before his insolvency, he

gave his creditor notes signed "per pro. B. & Co., J. B.," & being sued on these notes, swore they were made with his wife's authority. In an action against the wife she swore that J. B. had no authority to give the notes in question, but would not swear that he did not tell her that he had given them:—*Held*: there was sufficient evidence to justify the finding that J. B. had authority to sign the notes.—*COOPER v. BLACKLOCK* (1880), 5 A. R. 535.—CAN.

**g. Building Society.]**—*Held*: incorporated building society might legally make notes in certain circumstances.—*SNARR v. TORONTO PERMANENT BUILDING & SAVINGS* (1890), 29 U. C. R. 317.—CAN.

**h. Church Society.]**—In an action by an indorsee on a promissory note payable to the Church Society of the Diocese of Toronto or bearer, defts. pleaded no power to hold or transfer notes:—*Held*: immaterial the note being payable to bearer.—*HAMMOND v. SMALL* (1858), 16 U. C. R. 290.—CAN.

**k. Company—Not authorised to indorse—Power to indorse as payee.]** A co. which under its charter has no power to indorse, give or accept negotiable instruments, can indorse over to a third party any negotiable instrument made in its favour, so as to enable such third party to enforce payment against the maker or acceptor.—*MERCHANTS BANK OF CANADA v. MCLEOD & LEECH* (1910), 15 B. C. R. 290.—CAN.

*L. S. P. MERCHANTS BANK OF CANADA v. MCLEOD & LEECH* (1910), 14 W. L. R. 461.—CAN.

**m. — Authorised by statute.]**—*Held*: the Kingston Marine Ry. Co. may give & receive notes in transacting their legitimate business.—*KINGSTON MARINE RY. CO. v. GUNN* (1846), 3 U. C. R. 368.—CAN.

**n. Corporate body.]**—*Held*: a corporate body may bind itself by a bill or note in a transaction not foreign to its charter though not expressly authorised so to do.—*MERRITT v.*

**677. Married woman.]**—A married woman may, in equity, charge her separate estate, by indorsing a bill of exchange in circumstances which might lead to the inference that she was a *feme sole*, & she is liable to its full amount, without taking into account any equities between herself & the drawer.—*MCHEMRY v. DAVIES* (1870), L. R. 10 Eq. 88; 39 L. J. Ch. 800; 22 L. T. 18 W. R. 855.

*Annotations:*—*Reid. Morrell v. Cowan* (1877), 6 Ch. D. *Mentd. Briggs v. Jones* (1870), L. R. 10 Eq. 92.

See, generally, HUSBAND & WIFE.

**678. Incapacity of one of joint parties—Effect of.]**—Pltf. sued defts., father & son, on a promissory note given in respect of a loan to the son, who was under age when the money was advanced to him. The father joined in the note in order to facilitate the transaction, understanding that the debt would be paid when the son came of age. It appeared that in all probability pltf. knew that the son was under age:—*Held*: the true meaning of the transaction was that the father acted as principal borrower, & although by Infants' Relief Act, 1874 (c. 62), the son was not liable, the father

*MAXWELL* (1855), 14 U. C. R. CAN.

**o. Mental incapacity—Not alty known—Proof of knowledge of indorsee.]**—Deft. sued as indorser of promissory notes pleaded unsoundness of mind & incapacity for business. The case was not one of obvious or commonly known mental affliction, & deft. had not been restrained in his actions as a person of recognised unsound mind usually is. Though very old, deft. had frequently, if not constantly, been about the place of business; the notes in question were renewals of notes of the firm of which deft. was a member:—*Held*: (1) deft. had failed to prove that pltf. knew of his incapacity when the notes were indorsed; (2) even if there was vitiating incapacity at the time of the indorsements, pltf. was entitled to revert to any earlier note for the same debts & recover upon them on the ground that the renewals were made under a mistake in fact.—*BANK OF OTTAWA v. BRADFIELD* (1912), 23 O. W. R. 818.—CAN.

**p. Mining company.]**—Where an incorporated mining co. has not, as a necessary incident, the right to draw, accept, or indorse bills of exchange for the purposes of their business, such right will not be given by implication under a power of "selling or otherwise disposing of their ores as the co. may see fit," contained in their articles of association.—*GILBERT v. MCANANY* (1869), 28 U. C. R. 384.—CAN.

**q. Shipmaster.]**—The master of a ship gave a draft on the owners, payable to their agents at a foreign port, for the amount of necessary disbursements. The agents indorsed the bill for value. Acceptance was refused by the owners, on the ground that they had claims against their agents exceeding the amount drawn for. In a question with the indorsee:—*Held*: the shipmaster had no power to bind his owners in a bill debt.—*LONDON JOINT STOCK BANK v. STRAWHAT & CO.* (1859), 21 Dunl. (Ct. of Sess.) 1327.—SCOT.



**Sect. 1.—In general. Sect. 2.]**

was liable as principal.—**WAUTHIER v.** (1912), 28 T. L. R. 239, C. A.

**679.** ———.]—If one of two partners is an infant, the holder of a bill accepted by both partners may declare on it as accepted by the adult only in the names of both.—**BURGESS v. MERRILL** (1812), 4 Taunt. 468; 128 E. R. 410.

*Annotation:—***Reid.** Boyle v. Webster (1852), 17 Q. B. 950.

**SECT. 2.—NECESSITY FOR SIGNATURE.**

1882 Act, ss. 23, 91.

*also, Part II., Sect. 1, sub-sect. 2, ante.*

**To make acceptance valid.]—**See Part VI., Sect. 3, sub-sect. 2, *ante*.

**To complete indorsement.]—**See Part XI., Sect. 15, sub-sect. 3, A., *post*.

**680. Liability of principal—Agent permitted to draw bills.]—**If A. permits B. to draw bills in his name he is liable as drawer to ignorant indorsees, although he had no interest nor knew when or in what number they were drawn; but he is not liable to a payee having knowledge of the transaction.—**SMITH v. STANGER** (1797), Peake, Add. Cas. 116, N. P.

*Annotation:—***Reid.** Re Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 616.

**681.** ———.]—If A. permits B. to draw bills in his name he is liable as drawer to ignorant indorsees. But he is not liable to the payee having knowledge of the transaction, or his creditors, & money paid by him on those bills is not provable under a Commission against A.—**CURTIS v. BARRIS** (1797), Peake, Add. Cas. 119, N. P.

**682.** ———. **Bill accepted for use of one joint principal without knowledge of other.]—**Where two persons were joint agents of the Royal Veteran Battalion, but were not otherwise connected in business, & were in the habit of accepting bills by of a clerk, in the following form: "For

*r. Evidence of authority.]—*At the maturity of the note on which action was brought the secretary-treasurer of defts. went to the payees & gave them a renewal note. Prior to this the had negotiated the note to the payees took the renewal note, not disclosing the fact that the had been negotiated, & defts. up the renewal without the original note. The note was subsequently paid. In an action on the original note:—**Held:** the action of defts. in giving a renewal of the note at its maturity, & in subsequently paying that note, sufficiently established that the note was made under their authority, & they were liable upon it.—**ROBERTSON v. NORTH-WESTERN REGISTER CO.** (1910), 13 W. L. R. 613.—**CAN.**

*s.* ———.]—Deft. C. was one of the board of the V. Co. The board was empowered to make byelaws, & one byelaw provided that all drafts, etc., should be signed by the secretary-treasurer & president; another that all contracts should be sealed & signed by these officials. Pltf. sued C. on a note payable to the V. Co., indorsed V. Co. Ltd., "per D., Vice-President & Acting President." Deft. was absent

at the time but was still a member of the board. A resolution of a directors' meeting authorised D. to sell & deliver to pltf. all the property, debts & effects of the co. in settlement of their claim:—**Held:** D. had no authority to indorse & the action failed.—**FIRST NATURE BANK v. COLEMAN** 2 O. W. R. 358.—**CAN.**

**PART IX. SECT. 2.**

*t. General rule.]—*No person can be made liable on a bill of exchange whose name does not appear on the instrument.—**LAU MAN CHO v. HONG KONG & SHANGHAI BANKING CORPN.** (1908), 4 Hong Kong L. R. 20.—**HONG KONG.**

*w.* ———. **Alleged agency of indorser.]—**A. drew upon X. in his own favour, & indorsed it to C., residing in T., who in her own name indorsed to pltf.; C. had a brother, D., residing in B., for whom, though not a partner, or in any way transacting business in his name, she had negotiated bills at banks & with merchants. In an action against D., it was alleged that C., as agent of deft. in that behalf authorised for & on behalf of deft., indorsed & delivered the bill to pltf.:

agents of the R.V.B., J. G." :—**Held:** it was no answer to a joint action against them by the indorsee of such a bill, to show that it was accepted for the private advantage of one without the knowledge of the other, although it appeared that the indorsee might, if he had inquired of the clerk who accepted it, have ascertained that such was the fact.—**SANDERSON v. BROOKSBANK** (1830), 4 C. & P. 286, N. P.

**683.** ———. **Onus on holder to show it was accepted within authority—Even when holder for value.]—**Where a bill is not accepted by A. personally the holder must show that the acceptance was given by A.'s authority, or that A. has ratified it, notwithstanding he is a holder for valuable consideration.—**DICKINSON v. VALPY** (1829), 10 B. & C. 128; L. & Welsb. 6; 5 Man. & Ry. K. B. 126; 8 L. J. O. S. K. B. 51; 109 E. R. 399.

*Annotations:—***Reid.** Thicknesse v. Bromilow (1832), 2 Cr. & J. 425; Bramah v. Roberts (1837), 3 Bing. N. C. 963; Edmonds v. Bushell & Jones (1866), 12 Jur. N. S. 332; Garland v. Jacomb (1873), L. R. 8 Exch. 216. **Mentd.** Dickenson v. Teague (1834), 4 Tyr. 450; Pitchford v. Davis (1839), 5 M. & W. 2; Ford v. Whitmarsh (1840), H. & W. 53; Tredwen v. Bourne (1840), 6 M. & W. 461; Steigenberger v. Carr (1841), 10 L. J. C. P. 253; Reynell v. Lewis, Wyld v. Hopkins (1846), 10 Jur. 1097; Ricketts v. Bennett (1847), 4 C. B. 686; Galvanized Iron Co. v. Westoby (1852), 8 Exch. 17; London & Continental Assee. Soc. v. Redgrave (1858), 4 C. B. N. S. 624; Martyn v. Gray (1863), 14 C. B. N. S. 824; Farquharson v. King, [1902] A. C. 325.

**684.** ———. **Sufficiency of evidence.]—**In an action against deft. as acceptor of a bill of exchange, no evidence having been given in whose hand the acceptance was written, but pltf. having shown that it was written by deft.'s wife & that deft. was an innkeeper:—**Held:** the circumstance of the bill having been paid by the drawer, & the amount of it obtained on discount by deft.'s wife having been applied by her in discharge of his debts, was not sufficient to prove that he had sanctioned the acceptance.—**GOLDSTONE v. TOVEY** (1839), 6 Bing. N. C. 98; 8 Scott, 394; 3 Jur. 1175; 133 E. R. 38.

**685.** ———. **What amounts to admission of authority.]—**If an order to admit a bill of exchange is made, where the notice describes it as having

**Held:** the action could not be sustained, D.'s name not appearing upon the bill in any shape.—**ROSS v. CODD** (1850), 7 U. C. R. 64.—**CAN.**

*a.* ———. **Order drawn on defendant's wife—Accepted by her in her own name—For debt of defendant—Whether capable of ratification.]—**Pltf. contracted with F. to do the plumbing of a house which F. had contracted to build for deft. W. M. After the work was done, F. drew an order on M. M., the wife of W. M., for the amount to which pltf. was entitled, which M. M. accepted in these terms: "Accepted by Mrs. M." In an action against W. M.:—**Held:** (1) the document was governed by Canadian Act, s. 23, & no one could be made liable on it as acceptor who had not signed it as such; (2) the acceptance was incapable of ratification.—**CRAIG v. MATHESON** (1900), 32 N. S. R. 452.—**CAN.**

*of principal—Note made per ——— on holder to prove authority.]—*Action was brought on a promissory note made by deft. & indorsed "R. W. per B. W." :—**Held:** the agency must be established.—**v. HUTTON** (1859), 9 L. C. R.

been "accepted by H. for debts," it is not competent to debts. to dispute the authority of H. to accept as their agent.—*WILKES v. HOPKINS* (1845), 1 C. B. 737; 3 Dow. & L. 184; 14 L. J. C. P. 225; 5 L. T. O. S. 200; 135 E. R. 732.

*Annotation*.—*Mentd. Stewart v. Collins* (1851), 20 L. J. C. P. 79.

**686. Bill drawn by directors—Holder deemed to have notice of absence of authority.]**—The directors of a joint-stock insurance co., registered under Joint Stock Co.'s Act, 1844 (c. 110), who were authorised by the deed of settlement to draw bills on account of the co. only when they were so drawn for the purposes of the co., drew a bill on behalf of the co. in payment of a claim due to pltf. on a policy effected by him with another co., the business of which was attempted to be assigned to the first-mentioned co. by a deed of amalgamation of the two cos. The amalgamation failed, & the deed of amalgamation was illegal & void, but the bill was given to & received by pltf. upon the supposition that such deed was valid. The issuing of the bill was no part of the ordinary business of the first-mentioned co.:—*Held*: pltf. could not recover against such co. on the bill, as the directors had no authority to draw it, & pltf., being taken to have had knowledge of the contents of the deed of settlement, must be considered to have had notice of the want of such authority.—*BALFOUR v. ERNEST* (1859), 5 C. B. N. S. 601; 28 L. J. C. P. 170; 32 L. T. O. S. 295; 5 Jur. N. S. 439; 7 W. R. 207; 141 E. R. 242.

*Annotations*.—*Reid. Moss S.S. Co. v. Whinney*, [1912] A. C. 254. *Mentd. Re Era Asso. Soc., Ex p. Williams, Ex p. Anchor Asso. Co.* (1860), 30 L. J. Ch. 137; *Re Saxon Life Asso. Soc.* (1862), 2 John. & H. 408; *Kearns v. Leaf* (1864), 1 Hem. & M. 681; *Re State Fire Insce. Co.* (1864), 4 New Rep. 458.

**687. Bill accepted by chairman of company—Under resolution of directors.]**—The directors of a general trading co., part of whose business was to accept bills of exchange, & whose articles conferred the most extensive powers of management on the directors, passed a resolution authorising the chairman to accept bills drawn on the co. by L., upon L.'s depositing securities to a certain amount. The chairman accepted the bills,

*indorsed by directors as such.]*—A director of the B. Co., being indebted to C., another director, granted him a bill for £5,000, which C. indorsed with his own name simply, & discounted with the D. Bank, to whom he was in debt. In return for the £5,000 bill, the bank, in place of cash, gave C. another bill, on another bank, for the amount of the first bill, less discount, payable to the B. Co. A. & C. indorsed this second bill as "directors"; & on discounting, the proceeds were made over to the B. Co. The £5,000 bill having been dishonoured, the D. Bank claimed payment from the co. on the ground that the bill had truly been their property, had been discounted by or for behoof of them, & they had drawn the proceeds:—*Held*: the only names on the bill sued on being those of A. & C. as individuals, there was, *ex facie* of the bill, nothing to render defenders liable.—*NORTH BRITISH BANK v. AYRSHIRE IRON CO.* (1853), 1 W. R. 536; 25 Sc. Jur. 466.—*SCOT.*

*Bill signed by officials of*—Three directors of a co., one of whom was also the secretary, treasurer, & agent of the co., drew a bill in the following form: "60 days after the date of this first of exchange

& third of the same tenor & date not being paid) pay to the order of S. two lakhs of rupees only, value received, & place to account of P., N., K., secretary, treasurer, & agent. The N. Co., Ltd., directors":—*Held*: it did not appear on the face of the bill that it was intended to be drawn on behalf of the co., & the co. was not liable.—*Re NEW FLEMING SPINNING & WEAVING CO.* (1879), 1 L. R. 3 Bom. 439; 1 L. R. 4 Bom. 275.—*IND.*

*e. — Drawee accepting as "acting superintendent" for another.]*—No person is liable upon a hundi or bill of exchange unless his name appears upon the instrument in a manner which, upon a fair interpretation of its terms, shows that the name is the name of the person really liable. A statement after the signature of the drawee that he is acting superintendent for another is merely descriptive, & does not make that other person a party to the instrument.—*SADUSUK JANKI DAS v. KISHAN PERSHAD* (1918), 1 L. R. 46 Ind. App. 33; 23 C. W. N. 1 L. R. Calc. 663.—*IND.*

*f. — Notes signed by*—*Liability of member of committee.]*—Action was brought upon promissory notes signed by persons as trustees "for the K. Club," but on the

& L. deposited some securities, but not nearly to the specified amount. The directors by resolution affirmed the transaction, but it did not appear that they knew that the requisite amount of securities had not been deposited. The bills were entered in the books of the co., & treated as binding on them. On the co. being wound up, a *bond fide* holder of some of the bills claimed to prove:—*Held*: the proof ought to be admitted, for the bills were binding on the co., as they had been accepted *modo et forma* by the authority of the board of directors, & the provision as to the deposit of securities was a collateral matter, into the observance of which a holder of the bills was not bound to inquire.—*Re LAND CREDIT CO. OF IRELAND, Ex p. OVEREND GURNEY & Co.* (1869), 4 Ch. App. 460; 39 L. J. Ch. 27; 20 L. T. 641; 17 W. R. 689, L. JJ.

*Annotations*.—*Consd. Dey v. Pullinger Engineering Co.* (1920), 89 L. J. K. B. 1229. *Reid. Re County Palatine Loan & Discount Co., Cartmell's Case* (1874), 9 Ch. App. 691; *Premier Industrial Bank v. Carlton Manufacturing Co. & Crabtree*, [1909] 1 K. B. 106.

**688. — Note made "in representation of" company.]**—The business of a co. was that of importers & dealers in tinned ox-tongues & other provisions. H. was appointed manager of the co.'s business in South America, "to take the entire charge of the interests of the co. there." No express authority was conferred on him to sign or accept bills or promissory notes on behalf of the co. He was desirous of entering into a contract with L. for the supply of ox-tongues to the co. in South America. L. refused to enter into a contract, unless a guarantee was given by some third person, & at the request of H., S. agreed to give the required guarantee, which he did by depositing £1,000 in a bank to the order of L. As a counter-security to S., H. gave him a promissory note for £1,000, signed by him "in representation of" the co. The co. made default in carrying out the provisions of the contract with L., & under a power contained in it, he forfeited the deposit, which was paid over to him by the bank. No goods were supplied to the co. under the contract. The co. never recognised the promissory note, &

notes debt's name did not appear. Debt. was one of the managing committee of the club, & the notes had been given on behalf of & under the authority of the committee in consideration of goods sold & delivered to the club:—*Held*: debt. was not liable.—*STANDARD BANK v. D.* (1884), 1 Buch. 424.—*S. AF.*

*g. Liability of partner—by firm.]*—In an action against the acceptor, on an avowment that it was directed to & accepted by him:—*Held*: no variance that the bill was directed to & accepted by a firm in which debt. was a partner.—*STACK-WEATHER v. ANDREWS* (1841), 6 O. S. 135.—*CAN.*

*Note made by*—The holder of a promissory note by a firm sued one of the

On exception to the summons grounds that on the facts it was not competent for pltf. to sue debt. on a promissory note made by debt's firm:—*Held*: the matter contained in the exception was not proper for exception, but should have been brought forward as a special defence under rules 50, 51, & 52.—*COOK v. HOONAIN MIA* (1912), 33 N. L. R. 12.—*S. AF.*



# 98 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Sect. 2.

it was dishonoured at maturity. The co. being in liquidation, S. claimed to prove in the winding-up upon the note:—*Held*: it not being shown that the giving of the note was necessary for the carrying on of the business of the co., or that it was in the ordinary course of the business, the note was not binding upon the co., & the claim in respect of it could not be admitted.—*Re CUNNINGHAM & Co., Ltd., SIMPSON'S CLAIM* (1887), 36 Ch. D. 582; 57 L. J. Ch. 169; 58 L. T. 16.

*See, generally, AGENCY, Vol. I., pp. 647, 648; COMPANIES.*

**689. Liability of partner—Secret partner in cotton business with partners in distinct grocery business—Bill of cotton business indorsed by partners in grocery business—Indorsee without knowledge of fraud.**—A. & B. were partners as grocers, & also partners with C. as cotton dealers, trading under the firm of A. & B., C. not being known to be a partner. Being indebted to D. for grocery goods in the firm of A. & B. & having accepted a bill which was dishonoured, they indorsed to D. a bill belonging to the partnership in the cotton trade as a security, D. not being cognisant of the fraud:—*Held*: C. was liable as indorser of the bill to D., there being no fraud or collusion in D.—*SWAN v. STEELE* (1806), 7 East, 210; 3 Smith, K. B. 199; 103 E. R. 80.

*Annotations*:—*Consd. Vere v. Ashby* (1829), 10 B. & C. 288. *Distd. Re Wardley & Hodson, Ex p. Thorpe* (1836), 2 Deac. 16. *Consd. Bawden v. Howell* (1841), 3 Man. & G. 638. *Distd. Yorkshire Banking Co. v. Beatson, Leeds & County Banking Co. v. Beatson* (1879), 4 C. P. D. 204. *Consd. Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109.

**690. — Ostensible partner—Bill accepted in name of firm.**—Goods having been ordered by E. were invoiced to "E. & Son," & a bill was drawn for the price on "E. & Son." The bill was accepted in the handwriting of the son, in name of E. & Son. The son was not a partner, & it was alleged that he accepted the bill only as his father's amanuensis:—*Held*: if the son had so conducted himself that the drawer of the bill might reasonably have believed & did believe that he was a partner, he was liable on the bill.—*GURNEY v. EVANS* (1858), 3 H. & N. 122; 27 L. J. Ex. 186; 30 L. T. O. S. 308; 157 E. R. 412.

690 l.

*by firm.*—Where promissory are signed by a firm as makers, a who holds himself out to the as a member of such firm, ough he may not be so in fact, is as a maker.—*ISAKETER v. RAY, & Co.* (1896), 26 S. C. R. 79.

CAN.

**1. — Debt incurred before partnership—Bill accepted in firm name during partnership—Maturing after** 1.)—A writ of attachment issued against R. & Co., on an acceptance in the name of the firm given for a debt contracted before G. became a member thereof. A bill of exchange for this debt had been accepted in the firm's name after G. joined it, in consideration of which an extension of time was given, & it passed through the books, & repudiated by G. This matured after G. had retired from the firm, & being unpaid the upon which the writ of attachment issued was given:—*Held*: G. was clearly liable to the attachment on this acceptance.—*Re* p. *GRIFFIN* (1878), 3 A. R. 1.—CAN.

*indorsed firm made by firm per the partner— before partnership deter-* d.)—A promissory note for \$1,700 was made by defts. dated Feb. 23, 1915, payable 30 days after date to order of pliffs., & was indorsed "The N. C. Co. per L. S." The debt represented by the note was contracted before Feb. 23, 1915, when L. S. became a partner in the co. L. S. retired from the partnership on Apr. 12, 1916. Pliffs. had not requested that L. S. should sign & he had made no request for time. A renewal note for \$1,400 & \$300 in cash was sent to pliffs. by K., another partner in the co., the cash being retained & the note returned:—*Held*: L. S. was liable for the balance of \$1,400 by reason of his partnership in the co. at the time when pliffs. were creditors of the firm. *INN (W. A.) & Co. v. NATIONAL*

n. of entered into a joint adventure to purchase shares in a railway.

## 691. Bill drawn by partner company.]

V. S. & Co., merchants at Buenos Ayres, entered into a contract with defts., merchants in London, to carry on joint exchange operations, the substance of which was, that V. S. & Co. should periodically draw bills on defts. at 90 days' sight, to be accepted by them, & sell the bills at Buenos Ayres, keeping defts. out of cash advance, by periodically remitting to them other bills to the same amount on other firms, the profit & loss of the operations to be shared between them. V. S. & Co. having become bkpt., pliffs., as holders of the bills, proved against the estate, & received £40 per cent. on the amount. In an action against defts. for refusing to accept the bills:—*Held*: defts. were not liable as drawers of the bills, as there was no express or implied authority in V. S. & Co. to sign that name as including defts.—*NICHOLSON v. RICKETTS* (1860), 2 E. & E. 497; 29 L. J. Q. B. 55; 1 L. T. 544; 6 Jur. N. S. 422; 8 W. R. 211; 121 E. R. 187.

*Annotations*:—*Apld. Re Adanson's Fibre Co., Miles' Claim* (1874), 9 Ch. App. 635. *Consd. Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109.

**692. — Dormant partner.]—The firm of B. & Co. having become bkpt., P., the holder of various bills of exchange drawn or accepted by the firm, brought an action against D. & other defts., claiming a declaration that the several defts. were partners in the firm, & as such liable on the bills:—*Held*: the true relation of the parties being that of active & dormant partners, & not merely of debtor & creditor, the several defts. were liable, as partners, for the whole of the partnership debts.—*POOLEY v. DRIVER* (1876), Ch. D. 458; 46 L. J. Ch. 460; 36 L. T. 79; 25 W. R. 102.**

*Annotations*:—*Reid. White v. Churchyard* (1887), 3 T. L. R. 428. *Menid. Re Howard, Ex p. Tennant* (1877), 6 Ch. D. 303; *Steel v. Lester* (1877), 3 C. P. D. 121; *Re Megwand, Ex p. Delhouse* (1878), 7 Ch. D. 511; *Meyer v. Schacher* (1878), 38 L. T. 97; *Norfolk v. Arbutnot* (1880), 6 Q. B. D. 279; *Walker v. Hirsch* (1884), 27 Ch. D. 460; *Frowd v. Williams* (1886), 56 L. J. Q. B. 62; *Adam v. Newbigging* (1888), 13 App. Cas. 308; *Badeley v. Consolidated Bank* (1888), 38 Ch. D. 238; *Hollom v. Whitchelow* (1895), 64 L. J. Q. B. 170; *Re Young, Ex p. Jones*, [1896] 2 Q. B. 484; *Re Fort, Ex p. Schofield*, [1897] 2 Q. B. 495.

**693. Liability of firm—Bill drawn by partner in name of firm—On partnership account.]—Pltf.**

agreed to raise the funds by bill<sup>6</sup>. Two sets were drawn & discounted by pursuer's bank. Two of the parties<sup>8</sup> became bkpt. The bank claimed on defender, the third party, not only for the set of bills on which his name appeared, but for the other set, on the plea that they were all for the joint adventure:—*Held*: he could recover.—*BRITISH LINEN CO. v. ALEXANDER* (1853), 1 W. R. 214; 25 Sc. Jur. 180.—SCOT.

c. *Liability of member of unincorporated association—On note signed by two other members—Knowledge of member of an incorporated assocn. was present when money was lent for the purposes of the assocn., & was a party to the negotiations which led up to the signing by two other members of a promissory note payable to the lender for the amount of the loan:—Held: he personally liable for the sum lent* *TIN v. HOBBS*, [1917] 3 W. W. —CAN.

d. *Liability of firm—Note partner in firm name—Two firms of same—Partners not the same in* Defts. P. & D. carried on a



## PART IX.—CAPACITY AND AUTHORITY OF PARTIES.

declared that J. and deft. were partners jointly merchandising, that J. subscribed a bill of £100 payable to H. or his order by himself and his partner, that H. indorsed the bill to pltf., & that deft. had notice thereof and upon demand did not pay, etc. Deft. demurred that it was not alleged, that J. promised for deft. and himself upon the account of trade, and that it might be that the bill was for rent or some other thing, for which the partner was not liable:—*Held*: it should be intended that the bill was for merchandising, especially since deft. had demurred generally, & if the case had been otherwise, deft. might have pleaded it.—*PINKNEY v. HALL* (1897), 1 Ld. Raym. 175; 1 Salk. 126; 91 E. R. 1013.

**694. ——— To discharge private debt.]—**One co-partner cannot bind another by drawing a bill in the name of the firm for the discharge of his own private debt, without the knowledge of his co-partner, & this defence may be set up by the latter in an action by the indorsee of the bill, without giving any notice of his intention to dispute the consideration.—*GREEN v. DEAKIN* (1818), 2 Stark. 347, N. P.

*Annotations*:—*Consd. Wintle v. Crowther* (1831), 1 Cr. & J. 316; *Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615. *Reff. Levenson v. Lane* (1862), 13 C. B. N. S. 278.

**695. ——— Note made by partner in own name—To secure joint debt.]—**If a promissory note appears on the face of it to be the separate note of A. only, it cannot be declared on as the joint note of A. & B., though given to secure a debt for which A. & B. were jointly liable.—*SIFFKIN v. WALKER* (1809), 2 Camp. 308, N. P.

*Annotations*:—*Reff. Beckham v. Knight* (1838), 4 Bing. N. C. 243; *Trueman v. Loder* (1840), 11 Ad. & El. 589.

**696. ——— Bill drawn by partner in own name—Proceeds applied to account of firm.]—**One of two

business in partnership in T., D. also carried on a similar business alone in M., both being under the name of D. & Co. D. gave a promissory note as representing the M. firm. In an action by an indorsee upon the note:—*Held*: deft. P. was not liable & it was a fact to be decided from the evidence the particular firm intended to be bound.—*DANKS v. PARK* (1889), Cam. Cas. 200.—**CAN.**

**698 i. ——— Note not within of authority.]—**Deft. A. sold his business to deft. B., who placed deft. C. in charge, conducting the business under the name of C. B. & Co. Pltfs. asked A. to get B. to sign a note for an account owing them by A. at the time of the sale, which B. refused to do. A. then saw C. & induced him to sign the firm name to the note:—*Held*: even if C. were a partner, the transaction was not within the scope of the partnership business & neither the firm nor the other partner were liable.—*MORRIS v. SOREY* (1909), 12 W. L. R. 558.—**CAN.**

**discharge private debt.]—**A note given by a partner for a private debt in the name of the firm:—*Held*: not binding on the firm.—*BRAL v. SHELDON* (1836), 4 O. S. 302.—**CAN.**

partner will be held liable for the payment of a note to a holder in due course thereof, not aware of the true facts, if such note was given by a co-partner for his private interest.—*LARUE v. MORGAN BANK* (1918), Q. R. 28 K. B. 203.—**CAN.**

**694 iii. ——— Plaintiffs**

*ing on partner's security.]—*Defts. & M. were in partnership. M. took to pltf. a note, filled up in his writing & purporting to be made by the firm, payable to himself & indorsed by him, which the pltf. took from him for value. This note was made for his own private purposes in fraud of the partnership. Pltfs.' manager swore that he relied on M.'s security, & did not inquire about the firm. M., as between himself & his co-partners, was not authorized to sign the note in their name:—*Held*: pltf. having avowedly accepted it on the security of M., defts. were not estopped from setting up M.'s want of authority.—*CANADIAN BANK OF COMMERCE v. WILSON* (1874), 36 U. C. R. 9.—**CAN.**

**so drawn duly honoured.]—**A partner made a promissory note in the name of his firm, & gave it to his creditor for his own separate debt; he had, during a period of 6 months previously, so used cheques of the firm which were duly honoured:—*Held*: the creditor had reasonable ground for believing that such partner had the authority of the firm to make, & so to use, such promissory note, & might recover the amount from the firm.—*LONDON CHARTERED BANK OF AUSTRALIA v. KERR* (1878), 4 V. L. R. 330.—**AUS.**

*of third party.]—*Pltf., knowing that defts. were a firm of solrs., advanced to A. money upon a joint note signed by him & by one of defts. in the firm's name, without the knowledge or consent of his partner. No usage or

partners drew bills of exchange in his own name, which he procured to be discounted with a banker through the medium of the same agent, who procured the discount of other bills drawn in the partnership firm with the same banker:—*Held*: the latter had no remedy against the partnership, either upon the bills so drawn by the single partner, or for money had & received through the medium of such bills, though the proceeds were carried to the partnership account, the money being advanced solely on the security of the parties whose names were on the bills by way of discount, & not by way of loan to the partnership, & though the banker conceived at the time that all the bills were drawn on the partnership account.

If the bills had been void, as if for instance they had been forgeries, that might have made a different case, because then no consideration would have passed to the person discounting; but here a good consideration was given for the discount, viz., the responsibility of the drawer of the bills. In the absence of any express contract between the parties, we must treat the transaction as a mere discount of the bills (*LORD ELLENBOROUGH, C.J.*).—*EMLY v. LYE* (1812), 15 East, 7; 104 E. R. 746.

*Annotations*:—*Distd. Denton v. Rodie* (1813), 3 Camp. 493. *Consd. Beckham v. Knight* (1838), 4 Bing. N. C. 243. *Expld. Alliance Bank v. Tucker* (1867), 17 L. T. 13. *Consd. Yorkshire Banking Co. v. Beatson, Leeds & County Banking Co. v. Beatson* (1879), 4 C. P. D. 204. *Distd. Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109. *Reff. South Carolina Bank v. Case, Beckett v. Case* (1828), Dan. & Ll. 103; *Smith v. Craven* (1831), 9 L. J. O. S. Ex. 174; *Trueman v. Loder* (1840), 11 Ad. & El. 589; *Bawden v. Howell* (1841), 3 Man. & G. 638; *Re Laurence & Mortimore, Ex p. McKenna, City Bank Case* (1861), 3 De G. F. & J. 620. *Mentd. Evans v. Whyte* (1829), 3 Moo. & P. 130.

**697. ——— Discounted & indorsed by other partner.]—**If A. & B. are partners in a trade

general mutual authority to sign ——— in the name of the firm was proved, & it was admitted that pltf. had no knowledge of the transactions relied upon to show such authority:—*Held*: pltf. could not recover against both defts. but deft. who signed the note was liable.—*WILSON v. BROWN* (1881), 6 A. R. 411. **CAN.**

**Pleading.]—**In an action against A. & B. carrying on business in partnership with C., under the style of A. & Co., on a promissory note signed by A. in the name of the firm, the declaration alleged that the note was made by A. & B. under the style & firm of A. & Co.:—*Held*: (1) no variance; (2) the non-joinder of C. could only be taken advantage of by plea in abatement.—*KELLY v. BALLOCH* (1845), 2 Kerr. 699.—**CAN.**

**695 i. ——— Note made by partner in own name—Proceeds used for business of firm.]—**Where one member of a partnership borrows money upon his own credit by giving his own promissory note therefor & afterwards uses the proceeds of the note in the partnership business of his own free will, without being under any obligation to, or contract with, the lender so to do, the partnership is not liable for the loan.—*SHAW v. CADWELL* (1845), 17 S. C. R. 367.—**CAN.**

**drawn by partner in own name—For partnership purposes.]—**One partner cannot bind the firm by a bill drawn in his own name, although for partnership purposes.—(*GOLDIE v. MAXWELL* (1841), 1 U. C. R. 424.—**CAN.**)

8.]

authorise him to indorse a bill of exchange in the name of the partnership, though drawn by him in that name, & accepted by debtor of the partnership, after the dissolution; so that the indorsee cannot maintain an action on the bill against A., B. & C. as partners. Neither can such indorsee maintain an action against them for money paid to the use of the partnership, though in point of fact the money raised by discounting a note which he had given, in discounting the bill, be applied by A. to the payment of a debt due from the partnership.—*KILGOUR v. FINLYSON* (1789), 1 Hy. Bl. 155; 126 E. R. 92.

*Annotation*:—*Mentd. Watson v. Woodman* (1875), L. R. 20 Eq. 721.

**712.** —[.]—After the dissolution of a partnership, one of the persons who composed the firm cannot put the partnership name on any negotiable security, even though such existed prior to the dissolution, or was for the purpose of liquidating the partnership debts, notwithstanding such partner may have had an authority given him to settle the partnership affairs.—*ABEL v. SUTTON* (1800), 3 Esp. 108, N. P.

*Annotation*:—*Consd. Re Houghton & Watts, Ex p. Robinson* (1833), 3 Deac. & Ch. 376.

**713.** ——— Absence of fraud in indorsee.]—To an action by indorsee on a bill drawn by debts. A. & B., as partners, payable to their own order, & indorsed by them, B. pleaded that the bill was indorsed by A. to pltf., in the partnership name, after a dissolution of the partnership, without the privity of consent & in fraud of B., & for A.'s private purposes, & that pltf. knew of the dissolution at the time of the indorsement:—*Held*: the plea was bad for not showing that pltf. had colluded with A., or was privy to the fraud.—*LEWIS v. REILLY* (1841), 1 Q. B. 849; Arn. & H. 254; 4 Per. & Dav. 629; 10 L. J. Q. B. 135; 5 Jur. 98; 113 E. R. 1165.

—*Reid. Garland v. Jacomb* (1873), L. R. 8 Exch. 216.

**714.** ——— Bill drawn by agent in name of firm—In winding up firm.]—Three persons carried on

firm cannot without express authority from his former co-partners indorse in the name of the firm a promissory note made payable to the firm.—*PATERSON v. HUGHES* (1871), 2 V. L. R.

**b.** ——— Habitual use of firm name by partner for personal affairs—*Knowledge of co-partner.*] Where partner knows that his partner habitually uses the partnership name for his personal affairs, the partnership will be answerable upon a note so indorsed.—*Re McKee* (1918), Q. R. 53 S. C.—CAN.

*Holder without notice of authority to indorse.*] Having a claim against M., agreed to give him time, on receiving a good indorsed note, & M. sent him a note made by himself, payable to W. M. or order, & indorsed by W. M. & by the firm of "A. & J. C." Pltf. took the note before it was due, knowing nothing of the circumstances under which it was indorsed by the firm or of the authority of J. C., who indorsed it, to use the partnership name. When it fell due, J. C. being absent from the country, pltf. sued

the other partner, A. C.:—*Held*: he was entitled to recover.—*HENDERSON v. CARVETH* (1858), 16 U. C. R. 324.—CAN.

*accommodation of third party—Holder with notice of circumstances.*]—H. made a note payable to L., or order, & took it to one of debts, requesting him to indorse it for his accommodation. M. indorsed it in the name of the firm, without his co-partner's sanction or knowledge. L. afterwards indorsed, but without recourse, & pltf. took it with knowledge of the circumstances:—*Held*: M. could not bind his partner by indorsing for such purpose, & pltf. could not recover.—*HARRIS v.* 14 U. C. R. 164.—CAN.

**715 i.** Intoxication of defendant—Action by payee against drawer.]—To support a plea of intoxication as a defence to an action on a negotiable instrument in the hands of the payee or a person who receives it with knowledge, there must be some evidence that the drawer signed the cheque when incapable of forming a rational judgment of what he was doing, & of the effect on his interests. The

business as partners under the firm of J. B. & Son, two of the partners died, & the surviving partner employed deft., who had previously acted as a clerk to the firm, to wind up the affairs. In that character deft. attended the warehouse, & transacted business with different parties on account of the firm. In those circumstances, deft., using & signing the name of the firm, drew upon J., a debtor to the firm, a bill of exchange, which J. accepted:—*Held*: deft. was not liable as the drawer in an action upon the bill, his name not being affixed to it, without some proof that he had no authority to draw bills in the name of the firm, or that he had not acted *bond fide*. *Qu.*: whether, if it had been proved that he had no such authority, he would have been liable in an action upon the bill.—*WILSON v. BARTROP* (1837), 2 M. & W. 863; Murp. & H. 81; 6 L. J. Ex. 251; 1 Jur. 43, 949; 150 E. R. 1008.

*Annotation*:—*Mentd. Jenkins v. Hutchinson* (1849), 13 Q. B. 744.

**715.** Rights of firm—Bill indorsed by partner in name of firm—In fraud of firm—Liability of indorsee with notice.]—B. & S. traded in partnership, & were possessed of bills of exchange, which S., in fraud of the partnership, indorsed & delivered to deft. in satisfaction of a private debt of his own, deft. being cognizant of the fraud. S. became bkpt. Deft. having realised the bills, the assignees of S., jointly with B., without having previously done anything to disaffirm the transaction, brought an action against deft. for the wrongful conversion, & for money received to their use:—*Held*: without deciding whether pltf. could maintain an action for conversion, they were entitled to recover under the counts for money received to their use.—*HEILBUT v. NEVILL* (1870), L. R. 5 C. P. 478; 39 L. J. C. P. 245; 22 L. T. 662; 18 W. R. 898, Ex. Ch.

*Annotation*:—*Mentd. Bennett v. Gamgee* (1876), 2 Ex. D. 11.

*See, generally, PARTNERSHIP.*

**716.** Intoxication of defendant—Action by indorsee against indorser—Indorsee with notice.]—To an action by indorsee against indorser of a bill of exchange, deft. pleaded, that, when he indorsed the bill, he was so intoxicated, & thereby so entirely deprived of sense, understanding, &

drawer's own evidence is the best on this point; but, if this evidence is not available, the jury may infer the fact from surrounding circumstances.—*GOODISON v. SUTTON* (1883), 1 N. Z. L. R.

**716 ii.** ——— Action by payee against maker—*Ratification.*]—Deft. signed applications to pltf. for insurance upon the lives of his children, & signed instruments by which he promised to pay the amounts of the first premiums. Pltf. sued upon these instruments as promissory notes; & deft., by his statement of defence, alleged that he signed them when under the influence of intoxicating liquor & incapable of contracting & that the notes were given on account of the premiums, & were unenforceable on account of deft.'s incapacity:—*Held*: deft. was drunk & incapable when he signed & executed the instruments sued on, but he afterwards ratified them so as to make himself liable.—*IMPERIAL LIFE ASSURANCE CO. OF CANADA v. AUDETT* (1913), 30 W. L. R. 372.—CAN.

**716 iii.** ——— Action by indorsee against maker—*Omnis*



the use of his reason, as to be unable to comprehend the meaning, nature, or effect of the indorsement, or to contract thereby, of which pltf., at the time of the indorsement, had notice:—*Held*: a good answer to the action, & not to amount to an argumentative traverse of the indorsement.—*GORE v. GIBSON* (1845), 13 M. & W. 623; 14 L. J. Ex. 151; 4 L. T. O. S. 319; 9 Jur. 140; 153 E. R. 260.

*Matthews v. Baxter* (1873), L. R. 8 Exch. 132. *Reid. Molton v. Camroux* (1848), 2 Exch. 487; *Imperial Loan Co. v. Stone* (1892), 61 L. J. Q. B. 449.

### SECT. 3.—FORGED OR UNAUTHORISED SIGNATURES.

See 1882 Act, s. 24.

**717. Effect of—Gives no title to discharge bill—Forged indorsement of payee of one part of bill in set—Acceptor liable to pay other part of bill to real payee.]—Defts., who had a house in America as well as in London, drew two bills of exchange there, the first & second of the same tenor & date on their house in England, payable to pltf. One of them being lost came into the hands of a third person, who forged an indorsement of the payees, & received the amount of it from defts. in England. Afterwards the real payees brought their action upon the other bill, & recovered.—*CHEAP v. HARLEY* (circa 1786), cited 3 Term Rep. 127; 100 E. R. 491.**

**718. ——— Maker not protected by paying on forged indorsement—Unless negligence depriving plaintiff of remedy clearly proved.]—A title cannot be made through a forged indorsement to a note or instrument negotiable by indorsement only; & if a note payable to A. or order be stolen from the payee before he indorse it, & the indorsement is forged, & it is duly paid by the maker when due, such payment does not protect him, & trover lies against him by the payee.**

If negligence be imputed to the payee for the purpose of depriving him of his remedy against the maker, such negligence must be clearly & distinctly proved.—*JOHNSON v. WINDLE* (1836), 3 Bing. N. C. 225; 2 Hodg. 202; 3 Scott, 608; 6 L. J. C. P. 5; 132 E. R. 396.

**719. ——— Gives indorsee no title.]—B. being liable to A. upon a bill of exchange, accepted by him for the accommodation of C., promised A. to indorse another bill in lieu of it, which was to be drawn by D. upon E. & delivered by C. to A. C. delivered to A. a bill drawn by D. upon E. &**

purporting to be indorsed by B., & A. delivered up the former bill. In an action at the suit of A. against B. on the substituted bill:—*Held*: the latter was not precluded from showing that the indorsement was a forgery.—*MOXON v. PULLING* (1814), 4 Camp. 50, N. P.

**720. ———.]—Stamp Act, 1853 (c. 59), s. 19, which protects the banker upon whom a cheque is drawn against the forgery of the indorsement of the person to whose order it is made payable, does not extend to protect any other person who takes the cheque upon the faith of such forged indorsement.—*OGDEN v. BENAS* (1874), L. R. 9 C. P. 513; 43 L. J. C. P. 259; 30 L. T. 683; 38 J. P. 519; 22 W. R. 805.**

—*Consd. Matthiessen v. London & County Bank* (1879), 5 C. P. D. 7; *McEntire v. Potter* (1889), 22 Q. B. D. 438; *Morison v. London County & Westminster Bank, Ltd.*, [1914] 3 K. B. 356. *Reid. Arnold v. Cheque Bank, Arnold v. City Bank* (1876), 1 C. P. D. 578; *Hobbett v. Pinkett* (1876), 1 Ex. D. 368; *Bissell v. Fox* (1884), Cab. & El. 395; *Macbeth v. North & South Wales Bank*, [1906] 2 K. B. 718.

Protection of bank generally, see *BANKERS & BANKING*, Vol. III., pp. 2—

**721. ——— Though bill genuinely indorsed afterwards.]—If a bill has been indorsed in the name of a party without his knowledge, an indorsement by him, after the bill has come to maturity, will not do away with the effect of the fraudulent indorsement, & although a party give full value for a bill, he will not be considered as a *bona fide* transferee having any title to it, & the ct. will order it to be delivered up.—*ESDAILE v. LA NAUZE* (1835), 1 Y. & C. Ex. 394; 4 L. J. Ex. Eq. 46; 100 E. R. 100.**

Annotation:—*Reid. Munroe v. Bordier* (1849), 8 Q. B.

**722. ——— Liability of indorsee to original payee.]—Pltf., merchants in New York, desiring to transmit £1,000 to W. & Co., of Bradford, purchased from S. & Co., in New York, a draft for that amount drawn by S. & Co. on S., P., & Co., London, payable to the order of pltf. on demand. Pltf. indorsed the draft specially to W. & Co. or order, & inclosed it in a letter addressed to them which was placed in a letter-box in their office to be posted in the usual way. The letter was stolen by H., a clerk in the employ of pltf., who forged an indorsement of W. & Co., & procured defts., bankers in London, to present the draft & obtain the money, which was placed by them to the account of a person acting in concert with H., upon whose cheques the money was almost immediately drawn out. In an action for money had & received, defts., in order to show that the negligence of pltf. in the custody & transmission of the draft afforded facilities for the fraud, & so**

indorsees of promissory notes sued the maker; deft. contended that at the time of making the notes he was so drunk that he was unable to know what he was doing:—*Held*: the notes were affected with fraud; deft. being drunk cast the burden of proof of want of knowledge of the payee upon pltf.—

*AY v. HUTCHINSON* (No. 2) 6 Terr. L. R. 425.—CAN.

#### PART IX. SECT. 3.

**a. Unauthorized signature distinguished from unauthorized instrument.]—A book-keeper had authority within the range of his duties to use a rubber stamp with the payee's name upon it adding his own**

in ink: he so indorsed a cheque & then fraudulently cashed the cheque so indorsed with deft. who indorsed it & paid it in to his own account with pltf.:—*Held*: what was unauthorized was not the signature of the agent, but the improper use of the properly indorsed instrument afterwards.—*CANADIAN BANK OF MEXICO v. WONG FOO*, [1918] 3 W. 11 Alta. L. R.

**719 l. Effect of—Gives indorsee no title.]—No person can claim a title to a negotiable instrument through a indorsement. Such indorsement is a nullity & must be taken as if no such indorsement was on the instrument.—*BANKU BEHARI SHUKLA v.***

**SECRETARY OF STATE FOR (1908), 1 L. R. 36 Ocho. 239.—IND.**

**719 II. ———.]—In an action on a promissory note, an indorsement was proved to be a forgery:—*Held*: the holder whose title was derived from such indorsement, although acting in entire good faith, could not recover the amount from any previous indorser.—*LARUE v. EVANTUREL* 2 L. C. L. J. 113.—CAN.**

**——— Though note indorsed afterwards.]—In an action by the last indorsee against the last indorser of a promissory note, it is no defence that the names of the prior indorsers are forged.—*EASTWOOD v. WESTLEY* (1840), 6 O. H. 55.—CAN.**



# 104 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Sect. 3.—*Forged or unauthorised signatures.*]

estopped them from suing for the money, tendered evidence that it was a usual & almost invariable practice amongst merchants sending large remittances from abroad to send, besides the letter containing the remittance, a letter of advice by the same or the next mail. That evidence was rejected, on the ground that the alleged negligence was collateral only to the transaction giving rise to the action:—*Held*: pl'tfs.' right to the draft, & to sue for the proceeds thereof in the hands of defts. as money received to their use, was not affected by the felonious act of H., & the evidence tendered was rightly rejected.—*ARNOLD v. CHEQUE BANK, ARNOLD v. CITY BANK* (1876), 1 C. P. D. 578; 45 L. J. Q. B. 562; 34 L. T. 729; 40 J. P. 711; 24 W. R. 759.

*Annotations*:—*Apprvd.* *Fine Art Soc. v. Union Bank of London* (1886), 17 Q. B. D. 705. *Consd.* *Kleinwort Sons v. Comptoir National D'Escompte De Paris*, [1894] 2 Q. B. 157. *Refd.* *London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 96; *Bank of England v. Vagliano*, [1891] A. C. 107; *Lacave v. Credit Lyonnais*, [1897] 1 Q. B. 148; *Bavins v. London & South Western Bank* (1899), 81 L. T. 655; *Gordon v. London City & Midland Bank, Gordon v. Capital & Counties Bank*, [1902] 1 K. B. 242; *Macbeth v. North & South Wales Bank*, [1908] 2 K. B. 718; *London Joint Stock Bank v. Macmillan & Arthur*, [1918] A. C. 777. *Mentd.* *Keith v. Burrows* (1876), 1 C. P. D. 722; *Matthiessen v. London & County Bank* (1879), 5 C. P. D. 7; *Patent Safety Gun Cotton Co. v. Wilson* (1880), 49 L. J. Q. B. 713; *Nahmaschinen Fabrik Act. v. Ploford & Leo & Harris* (1888), 4 T. L. R. 617; *Staple of England v. Bank of England* (1888), 21 Q. B. D. 160; *McEntire v. Potter* (1889), 22 Q. B. D. 438; *Scholfeld v. Lonsborough*, [1896] A. C. 514; *Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439.

**723. ——— Liability of indorsee to payee—Plea of negligence of payee bad.]**—To a statement of claim alleging that a cheque payable to the order of pl'tfs. was stolen from them, & the indorsement of their name forged upon it, & that it subsequently came into the possession of deft., who converted it to his own use, deft. pleaded that pl'tfs. knowingly employed as clerk a man who had been convicted of embezzlement, & was a notorious thief, that the clerk was allowed access to the rooms where pl'tfs.' letters & cheques were kept, & was empowered & permitted to receive & open the letters & cheques, & to witness the mode in which pl'tfs. indorsed their cheques, that the clerk was frequently paid his wages by the duly indorsed cheques of pl'tfs., & sometimes employed by pl'tfs. to indorse cheques payable to their order, that the cheque in question was taken or stolen by the clerk, who thereupon forged the indorsement, & then procured E., who had no notice of the forgery & theft, to cash the cheque, that deft. received same, with other cheques, from E., without notice of the forgery & theft, & in the ordinary course of business gave full value therefor, that, by their carelessness & wilful neglect in dealing with their letters & cheques, pl'tfs. did not discover the forgery & theft for a considerable time, & after such discovery did not take any steps to prevent the negotiation of the cheque, & by such carelessness & neglect caused deft. to become a *bona fide* holder for value of the cheque without notice of the forgery & theft:

**726 l.** *Gives no rights against person whose indorsement forged.]*—A which had been purchased by for value & indorsed by him to "for realisation," & sent to that firm by post, was lost or stolen, & never reached D. It eventually came into the hands of deft., bearing no to D., but indorsed to

H., & by H. Deft. alleged that he took it in the ordinary course of business, & for valuable consideration, from H., after the acceptors to whom it had been sent for that purpose had acknowledged their acceptance in favour of H., by whom it purported to be indorsed to deft.'s firm. On its honour by the acceptors deft. d

*Held*: the plea was bad.—*PATENT SAFETY GUN COTTON Co. v. WILSON* (1880), 49 L. J. Q. B. 713, C. A.

*Annotation*:—*Refd.* *Morison v. London County & Westminster Bank* (1913), 108 L. T. 379.

**724. ——— Or parties claiming under forged indorsement—Effect where drawer fictitious person.]**—Where a bill of exchange is drawn by a real person, & the indorsement is forged, the persons who claim under the forged indorsement have no title to the bill, but where the drawer is a fictitious person it is otherwise.—*LONDON & SOUTH WESTERN BANK v. WENTWORTH* (1880), 5 Ex. D. 96; 49 L. J. Q. B. 657; 42 L. T. 188; 28 W. R. 516.

*Annotations*:—*Consd.* *Smith v. Prosser*, [1907] 2 K. B. 735. *Refd.* *Scholfeld v. Lonsborough*, [1896] A. C. 514. *Mentd.* *Herdman v. Wheeler*, [1902] 1 K. B. 361.

**725. ——— Gives no rights against person whose note forged—Notwithstanding acknowledgment as to genuineness.]**—In an action against the East India Co. by the holder of a forged imitation of one of their promissory notes issued by the Governor-General in Council at Calcutta:—*Held*: the co. were not bound by the acknowledgment of it as genuine by a clerk in their accountant-general's office, who was authorised by the accountant-general to compare all such notes with the register, but not authorised to certify their genuineness, although it appeared that it was his practice to do so.—*BANK OF BENGAL v. EAST INDIA Co.* (1834), 2 Knapp. 245; 12 E. R. 473, P. C.

**726. Gives no rights against person whose indorsement forged—Unless holder prejudiced by delay in giving notice of forgery.]**—Continued silence on the part of a person whose signature upon a bill of exchange has been forged, is not sufficient to preclude him from alleging the forgery, unless his conduct has prejudiced the position of the holder of the bill.

A bill of exchange for £76 at two months, purporting to be accepted by A., & drawn & indorsed by B. & C., was discounted for A. by a Scotch bank, no inquiries being made by the bank as to B. & C., whose signatures had been, in fact, forged by A. The bill fell due on April 10, 1879, & notice of dishonour was afterwards sent to B. & C. On April 14, before any reply to the notices of dishonour could have been received, A. brought to the agent of the bank a new bill drawn, accepted, & indorsed in blank with the same names as the former one, all the signatures having been again written by A. The bill was ultimately filled in for £70 at three months, & A. paid £6 to the agent. The second bill fell due & was dishonoured on July 17. A notice that the bill was about to become due had been sent to B. three days previously, & on July 21 notice of dishonour was sent to him. After B. had received notice of dishonour of the first bill, he was told by A. that that bill had been paid. On receipt of notice of dishonour of the second bill he communicated with his solr., & on July 29 he for the first time informed the agent of the bank that his signatures to the bills had been forged:—*Held*: since the position of the

payment of H., who stated that the indorsement to the hundi was forged, & refused to pay. The indorsement to H. proved not to be genuine. In a suit for recovery of the hundi:—*Held*: the fact that deft. took the hundi in the course of business for valuable consideration, & without notice, did not give him a good title to retain it as

bank had not been altered during the interval, B.'s delay in giving information to the bank did not estop him from pleading that his signatures had been forged.—*MACKENZIE v. BRITISH LINEN* (1881), 6 App. Cas. 82; 44 L. T. 431; 29 W. R. 477, H. L.

*Annotations*:—*Distd. Ogilvie v. West Australian Mortgage Agency Corpn.*, [1896] A. C. 257. *Reid. Ewing v. Dominion Bank*, [1904] A. C. 806. *Mentd. Mackie v. Herbertson* (1884), 9 App. Cas. 308; *Colonial Bank v. Cady, London & Chartered Bank of Australia v. Cady* (1890), 63 L. T. 27.

**727. Gives no rights against person whose acceptance forged—Unless holder led to take**

**of acknowledgment.**—Pltfs. discounted for M. a forged bill of exchange, which purported to have been accepted by deft. Before discounting it one of pltfs. went to deft. & asked him if he had accepted any such bill for M. He said that he had done so, but in his evidence he swore that he had not been shown his signature to a bill which had been forged by M. A verdict having been given for deft. in an action brought upon the bill:—

there not having been such an acknowledgment by deft. of his signature as to estop him from disputing his liability on the forged acceptance, the ct. ought not to interfere with the verdict.—*LEVINSON v. YOUNG* (1885), 1 T. L. R. 571, D. C.

**728. — — — Except where indorsement forged by husband—Bill in respect of wife's**

pltf.—*THAKUR DAS v. FUTTEH MULL* (1871), 7 B. L. R. 275; 16 W. R. 3.—IND.

**f. — — — Gives no rights party whose signature forged—Unless holder prejudiced by delay in giving notice of forgery.**—Notice of dishonour of the note sued on was given on July 15; the summons issued on Oct. 7. On Nov. 26 deft. repudiated his signature. The maker of the note, who was said to have forged deft.'s signature, was ill on the latter date, & died on Dec. 12. Pltfs. had not been prejudiced by deft.'s silence.—*SHAW v. CONNELL* (1909), 7 E. L. R. 165.—CAN.

ture on a bill as indorser had written by the maker, his nephew, there being no evidence of express authority; deft. had before & afterwards indorsed for his nephew on purchases by him from those pltfs., & when payment of this note was demanded from him he had asked for time, & did not deny his indorsement until some months afterwards, when the maker had absconded:—*Held*: deft. had precluded himself by his conduct from disputing his liability.—*PRATT v. DRAKE* (1859), 17 U. C. R. 27.—CAN.

**h. — — — — —.**—One of two brothers, *ex facie* co-acceptors of a bill, alleged that his signature had been forged by his brother; he had received a charge for payment, & acquiesced in it for a long time, during which his brother, the true debtor, left the country:—*Held*: he was barred from pleading the forgery.—*MAIKLEM v. WALKER* (1833), 5h. (Ct. of Sess.) 53.—SCOT.

**Holder not from proving debt by independent** **e.**—Pltfs. brought a suit for recovery of money, on the allegation that deft. had taken from pltfs. a loan by executing a note in favour of one of pltfs.:—*Held*: even if the pro-

missory note be a forgery, pltfs. would succeed if they could prove the loan by independent evidence.—*MOTI LAL SAHA v. MONMOHAN GOSSAMI* (1900), 3 C. W. N. 56.—IND.

**i. — — — Gives no rights against whose indorsement unauthorized with knowledge that indorsements by secretary for**

**only.**—The secretary of deft. co., authority was limited to the of drafts, indorsed in the co.'s name drafts in which the co. had no interest, for the accommodation of C. Pltf. bank, where the drafts were discounted, knew that the indorsements were made for the accommodation of C.:—*Held*: the co. was not liable.—*UNION BANK v. EUREKA WOOLEN MANUFACTURING Co.* (1900), 33 N. S. R. 302.—CAN.

**m. — — — Drawer's name used out authority.**—Sub-agents of deft. co. in anticipation of freight of the co.'s steamers accepted bills drawn upon them by managers of the co., who subsequently discounted the bills. The managers had no authority to grant the bills & defts. did not receive the proceeds of the discount:—*Held*: defts. were not liable.—*ROSS, SKOLFIELD & Co. v. STATE LINE S.S. Co.* (1875), 13 Sc. L. R. 78.—SCOT.

**by company—Indorsee not holder in course.**—A note purporting to be indorsed by a co. does not constitute the indorsee a holder in due course unless the person signing the co.'s name has actual authority.—*BANK v. MCCULLOUGH* (1875), 13 Sc. L. R. 78.—SCOT.

**o. Subsequent ratification of forged signature—Conduct amounting to.**—Deft., F., was sued as maker of two promissory notes which purported to have been made by F. & indorsed by G., who was joined as co-deft. F. had neither signed the notes in question nor authorised anyone to sign them

separate estate.]—A bill of exchange, payable to the order of C., a married woman, was remitted to her in respect of her separate estate. Her husband got possession of it without her knowledge, forged her name on the back, then indorsed his own name, & gave the bill to P. to get it discounted, stating that she had indorsed it. P. got it discounted, & in order to do so was obliged himself to indorse it. He then paid the proceeds to the husband. The acceptor, in consequence of a notice from C., refused to pay the holder, who thereupon had recourse to P., who paid the holder. A suit having been instituted by C. to establish her title to the bill & to restrain P. from suing the acceptor at law:—*Held*: assuming P. to have notice that the bill was drawn in respect of C.'s separate estate, yet as there was nothing to excite suspicion of the forgery, he was justified on relying on the husband's statement that the bill had been indorsed by her, & was not bound to inquire further as to the genuineness of her signature, & there was no equity to restrain him from the assertion of the legal title which he acquired by the husband's indorsement.—*DAWSON v. PRINCE* (1857), 2 D. G. & J. 41; 27 L. J. (Ch. 169; 30 L. T. O. S. 237; 4 Jur. N. S. 407; 6 W. R. 171; 44 E. R. 903, L. .

*Annotations*:—*Mentd. Machryde v. Eykyn* (1871), 24 L. T. 461; *Lloyd's Banking Co. v. Jones* (1885), 29 Ch. D. 221.

*See, now, Married Women's Property Act, 1882 (c. 75).*

for him, but previous to the trial, when payment of the notes was demanded, F. had stated that he had signed the notes for the accommodation of his co-deft. G., & made an offer of payment provided time was given; in consequence of this admission pltf. refrained from taking proceedings against G. for forgery:—*Held*: F.'s conduct amounted to an adoption & ratification of the signatures to the & he was liable thereon.—

*BANK v. FARNSWORTH* (1880), 7 R. & G. 82; 7 C. L. T. 144. CAN.

**— — — Ratification under** **of fact.**—After a note, made by deft. S., had been signed, an alteration as to payment of interest made which amounted to Pltf., the manager of a bank, to whom the note had been indorsed with a view to its being discounted, wrote, as manager of the bank, to S., informing him that the bank had cashed the note in question & another note, & that the note in question bore interest at 8 per cent., & asking to be advised by return mail "if the notes are O. K."; & received a reply saying, "I guess those notes you discounted of mine to H. will be all right." Pltf. then personally discounted the note, & paid over the proceeds to H., the payee. Some months afterwards, while the note was still current, S., still believing that it was the bank that had discounted the note, signed a statement, prepared by pltf., in which he referred to the note as carrying interest at 8 per cent.:—*Held*: S. was not estopped thereby from setting the forgery.—*WOOD v. SMART* (1912), 26 W. L. R. 817.—CAN.

**q. — — — after honour.**—Where the signature of maker of a promissory note was a forgery, but, after dishonour, the maker had said that it was his and had acted similarly as to forged note held by the same holder:—*Held*: there was no ratification.—*KERNAN v. LONDON DISCOUNT*



**Sect. 3.—Forged or unauthorised signatures.]**

**729. — Indorsement by person of same name as payee.]**—If a bill of exchange payable to A. or order, get into the hands of another person of the same name as the payee, & such person, knowing that he was not the real person in whose favour it was drawn, indorse it, he is guilty of a forgery.—*MEAD v. YOUNG* (1790), 4 Term Rep. 28; 100 E. R. 876.

*Annotations:—*Consd. *R. v. Roberts* (1857), 7 Cox, C. C. 422. *Reid. Bulkeley v. Butler* (1823), 3 Dow. & Ry. K. B. 625; *R. v. White* (1847), 2 Car. & Kir. 404; *Vagliano v. Bank of England* (1889), 23 Q. B. D. 243; *Bank of England v. Vagliano*, [1891] A. C. 107.

**Fraudulent alteration of bill—Duty to take precautions to prevent fraud.]**—See Part XIV., Sect. 7, sub-sect. 5, *post*.

**Fraudulent alteration of cheque.]**—See **BANKERS & BANKING**, Vol. III., pp. 230 *et seq.*

**Subsequent ratification of forged acceptance.]**—See **AGENCY**, Vol. I., p. 397, Nos. 993–995, & cases *infra*.

**730. Right to recover sums paid in respect of forged bill—Drawee accepting & paying forged bill.]**—The drawee of a forged bill, who accepts & pays, or pays it only, cannot recover back against the payee.—*PRICE v. NEAL* (1762), 3 Burr. 1354; 1 Wm. Bl. 390; 96 E. R. 221.

*Annotations:—*Distd. *Bruce v. Bruce* (1814), 5 Taunt. 495;

& *MORTGAGE BANK, LTD.* (1878), 4 V. L. R. 279.—**AUS.**

—A bill drawn on F. in respect of goods purchased by him was accepted by F. & by his brother W. The bill was not paid at maturity but the amount due on it was reduced by subsequent payments. On a charge against both acceptors to make payment of the balance, W. presented a note of suspension on the ground that his alleged acceptance was a forgery. The reply to this was that he had accredited his signature by not denying his liability sooner though he had due notice of the dishonour of the bill:—*Held*: the circumstances warranted an issue whether W. had adopted the signature on the bill & rendered himself liable on it by holding out.—*FINDLAY v. CURRIE* (1850), 13 Dunl. (Ct. of Sess.) 278.—**SCOT.**

**s. — — — — —.]**—Payment of a forged promissory note cannot create a presumption against the one who paid without seeing it if he had reason to believe that an authorised note for the same amount was outstanding & if he complained of the forgery as soon as he became aware of it.—*BANQUE DE QUEBEC v. FRÉCHETTE* (1911), Q. R. 20 K. B. 558.—**CAN.**

**t. — — — — — Adoption of other forged signatures.]**—A person whose indorsement on a promissory note has been forged is not estopped from denying his signature by the fact that he had allowed judgment to go against him by default in a previous action by the same pltf. on an indorsement of his name on a prior promissory note forged by the same person, although the forger negotiated the second note after such judgment.—*SIMON v. SINCLAIR* (1908), 7 W. L. R. 719; 17 Man. L. R. 389.—**CAN.**

**— Neglect**

—A person who is aware that his name has been forged to a bill incurs no civil liability by merely remaining

*Burr* (1892), 9 S. O. 109.—**S. AF.**

*Jones v. Ryde* (1814), 5 Taunt. 488. *Fold. Smith v. Mercer* (1815), 6 Taunt. 76. *Consd. Wilkinson v. Johnson* (1824), 3 B. & C. 428. *Expld. London & River Plate Bank v. Bank of Liverpool*, [1896] 1 Q. B. 7. *Reid. Anchor v. Bank of England* (1781), 2 Doug. K. B. 637. *Mentd. Gibson v. Minet* (1791), 1 Hy. Bl. 569; *Chambers v. Miller* (1862), 13 C. B. N. S.

**731. — Party discounting forged navy or victualling bill.]**—A person who discounts a forged navy bill for another who passed it to him without knowledge of the forgery, may recover back the money as had & received to his use upon failure of the consideration.—*JONES v. RYDE* (1814), 5 Taunt. 488; 1 Marsh. 157; 128 E. R. 779.

*Annotations:—**Fold. Bruce v. Bruce* (1814), 5 Taunt. 495; *Gompertz v. Bartlett* (1853), 2 E. & B. 849. *Reid. Smith v. Mercer* (1815), 6 Taunt. 76; *Wilkinson v. Johnson* (1824), 3 B. & C. 428; *Cocks v. Masterman* (1829), 9 B. & C. 902; *Gurney v. Womersley* (1854), 4 E. & B. 133; *Leeds & County Bank v. Walker* (1883), 11 Q. B. D. 84. *Mentd. Westropp v. Solomon* (1849), 19 L. J. C. P. 1; *Hall v. Condor* (1857), 2 C. B. N. S. 22.

**732. —.]** A forged victualling bill passed from deft.'s possession, through pltf.'s hands, to the Bank of England, who presented the bill at the victualling office, where it was paid. On discovery of the forgery, the victualling office were paid by the Bank of England, & the banks were paid by pltf., the difference between the apparent & the real value of the bill:—*Held*: although the full apparent amount of the bill had been paid by the office on presentment, pltf. was entitled to

**w. — — — — —.]**—There is no fault involving liability when the maker of a promissory note does not proclaim it to be forgery until he has seen it, although he was previously aware that notes bearing his signature had been discounted by one of his creditors for an amount far in excess of what he owed.—*BANQUE DE QUEBEC v. FRÉCHETTE* (1911), Q. R. 20 K. B. 558.—**CAN.**

**y. — — — — —.]**—In a suspension of a charge upon a bill, on the ground of an alleged indorsation being a forgery, the charger pleaded that though it was a forgery, the suspender had adopted & accredited the bill by his conduct, intimation having been sent to him of the dishonour of certain bills of prior date in the same handwriting & having the same indorsation, & of which he had taken no notice. It was not, however, averred that these other bills had been seen by the suspender:—*Held*: this was not the case of a party having paid previous bills, so adopting them; but of a party who failed to answer letters with reference to bills which were retired by the proper debtor & who may never have seen the forgeries on the bills; that could not be an adopting of forged bills.—*BOYD v. UNION BANK OF SCOTLAND* (1854), 17 Dunl. (Ct. of Sess.) 159.—**SCOT.**

**z. — Must be strictly proved.]**—A person whose signature has been forged can only be held liable on the forged document upon proof that he has expressly or impliedly adopted or ratified the signature as binding upon him.—*UNION BANK LIQUIDATORS v. BERT* (1892), 9 S. O. 109.—**S. AF.**

**a. — Whether defendant's behaviour equivalent to adoption—Question for jury.]**—*Held*: the question whether deft. has adopted a forged acceptance is a question for the jury.—*WILKINSON STONEY* (1839), 1 Jebb & S. 509.—**IR.**

**730 i. Right to recover sums paid of forged bill.]**—Pltf. arranged

in T. with Y., a co. employee, to discount their draft on B. & Co. for \$4,989, & in pursuance of this arrangement a draft was drawn in H. by Y., in the co.'s name, on pltf., payable on demand to their own order for \$4,800, July 23. This draft was taken by Y. to defts. banking house at H. & there discounted by him, & the proceeds drawn by cheques in the name of the co. The draft was then forwarded by defts. to their branch in T., & by them presented to pltf. for acceptance & payment. Pltf. then discounted the first-mentioned draft with defts. at T. & with the proceeds paid the draft for \$4,800. Pltf., Sept. 11, discovered that both drafts had been forged by Y. & immediately notified defts., at the same time demanding payment of the amount of the forged draft for \$4,800 which was refused by defts. Pltf. paid the first-mentioned draft at maturity:—*Held*: pltf. had not lost his right of action by his delay in discovering the forgery, there being no actual genuine party on the bill against whom defts. could have recourse, & no remedy having been lost by them by such delay.—*RYAN v. MONTREAL BANK* (1887), 12 O. R. 39; 14 A. R. 553.

**730 ii. — Burden of proof.]**—In a suit to recover from resp. a sum which applt. claimed was the balance due to him by resp. on a deposit account which applt. had in resp.'s bank, applt. alleged that the amount had been paid out by resp. on a forged cheque to a person other than applt. & resp. pleaded that if the cheque had not actually been signed by applt. it was made, signed, & cashed with his knowledge & under his instructions & that applt. received its proceeds:—*Held*: as applt. had not filed an affidavit supporting his contention that the cheque was a forgery the burden of proof was on applt. & not on resp.—*FUTURAL v. DOMINION BANK* (1907), 4 E. L. R. 232.—**CAN.**

See, further, **BANKERS & BANKING**, Vol. III., pp. 235 *et seq.*



recover what he had paid from deft.—**BRUCE v. BRUCE** (1814), 5 Taunt. 495; 1 Marsh. 165; 128 E. R. 782.

*Annotations*.—**Feld. Wilkinson v. Johnson** (1824), 3 B. & C. 428. **Refd. Smith v. Mercer** (1815), 6 Taunt. 76.

**733. — Payment by drawee's bankers where bill made payable—Right of bank to recover from person to whom money paid.]—Defts. took a bill, accepted payable at plffs., who were the drawee's bankers, & indorsed it to their (defts') agents, to whom plffs. paid it when due, & seven days after sent it as their voucher to the drawee, who apprised them that the acceptance was forged:—*Held*: plffs. could not recover from defts. the amount which they had thus paid them on the forged acceptance.—**SMITH v. MERCER** (1815), 6 Taunt. 76; 1 Marsh. 453; 128 E. R. 961.**

*Annotations*.—**Distd. Wilkinson v. Johnson** (1824), 3 B. & C. 428. **Apld. Davies v. Watson** (1833), 2 Nev. & M. K. B. 709. **Consd. Leeds Bank v. Walter** (1883), 11 Q. B. D. 84; **London & River Plate Bank v. Bank of Liverpool**, [1896] 1 Q. B. 7. **Refd. Young v. Grote** (1827), 4 Bing. 253. **Mentd. East India Co. v. Tritton** (1824), 5 Dow. & Ry. K. B. 214; **Guaranty Trust Co. of New York v. Hannay**, [1918] 2 K. B. 623.

**734. Demand for repayment made next day—Holder entitled to notice of dishonour on day bill due.]—A bill, purporting to have been accepted by A., was presented for payment to his bankers on the day when it became due. The latter, believing it to be the genuine acceptance of A., paid the amount, but on the following day, having discovered that the acceptance was a forgery, they gave notice of that fact to the party to whom they had paid the bill, & required him to return the money:—*Held*: the holder of the bill was entitled to know, on the day when it became due, whether it was honoured or dishonoured, & no notice of the forgery having been given on the day the bill became due, the parties who had paid the money were not entitled to recover it back.—**COCKS v. MASTERMAN** (1829), 9 B. & C. 902; **Dan. & Id.** 329; 4 Man. & Ry. K. B. 676; 8 L. J. O. S. K. B. 77; 109 E. R. 335.**

*Annotations*.—**Apld. London & River Plate Bank v. Bank of Liverpool**, [1896] 1 Q. B. 7. **Distd. Imperial Bank of Canada v. Bank of Hamilton**, [1903] A. C. 49. **Apld. Morison v. London County & Westminster Bank**, [1914] 3 K. B. 356. **Refd. Roberts v. Tucker** (1851), 20 L. J. Q. B. 270; **Mather v. Maldstone** (1856), 1 C. B. N. S. 273; **Leeds Bank v. Walker** (1883), 11 Q. B. D. 84; **Deutsche Bank v. Beriro** (1895), 11 T. L. R. 591. **Mentd. Aiken v. Short** (1856), 1 H. & N. 210; **Durrant v. Eccl. Comrs.** (1880), 6 Q. B. D. 234.

**735. — By London correspondent of indorser for indorser's honour—Demand for repayment made in time—To admit due notice of dishonour to be given.]—Bills of exchange purporting to have the indorsement of H. & Co., bankers of Manchester, were presented for payment in London, at a house where the acceptance appointed them to be paid. Payment being refused, the notary who presented them, took them to plff., the London correspondent of H. & Co., & asked him to take up the bills for their honour. He did so, & struck out the indorsements subsequent to that of H. & Co., & the money was paid over to defts., the holders of the bills. The same morning it was discovered that the bills were not genuine, & that the names of the drawer, acceptor, & H. & Co. were forgeries. Plff. immediately sent notice to the defts., & demanded to have the money repaid. The notice was given in time for the post, so that notice of the dishonour could be sent the same day to the indorsers:—*Held*: plff. having paid**

the money through a mistake was entitled to recover it back, the mistake having been discovered before defts. had lost their remedy against the prior indorsers.—**WILKINSON v. JOHNSON** (1824), 3 B. & C. 428; 5 Dow. & Ry. K. B. 403; 3 L. J. O. S. K. B. 58; 107 E. R. 792.

*Annotations*.—**Distd. Cocks v. Masterman** (1829), 9 B. & C. 902. **Refd. London & River Plate Bank v. Bank of Liverpool**, [1896] 1 Q. B. 7. **Mentd. Mather v. Maldstone** (1856), 26 L. J. C. P. 58.

**736. — Liability of holder to drawer.]—Plff. drew a cheque on M. & Co., his bankers, payable to order, crossed it "L. & Co. Bank," & sent it for value to the payee, from whom it was stolen & his indorsement forged. The cheque was ultimately passed to deft., who took it *bona fide* in ignorance of the forgery & presented it to M. & Co. through a bank not named in the crossing, & M. & Co. paid it. Plff. had heard the day before of the loss of the cheque, but had taken no steps to stop it. The jury found that all parties except deft. had acted negligently:—*Held*: plff. could recover the amount of the cheque from deft., the innocent holder for value.—**BOBBETT v. PINKETT** (1876), 1 Ex. D. 368; 45 L. J. Q. B. 555; 34 L. T. 851; 24 W. R. 711.**

*Annotations*.—**Refd. Bissell v. Fox** (1884), Cab. & Kl. **Mentd. Charles v. Blackwell** (1877), 25 W. R. 472; **Durant v. Roberts & Kelghley, Maxsted**, [1900] 1 Q. B. 555; **Morison v. London County & Westminster Bank**, [1914] 3 K. B. 356.

**737. — Payment to bona fide holder for value—Position of holder altered.]—When the person, upon whom a bill of exchange is drawn, accepts the bill with forged indorsements thereon under the belief that such indorsements are genuine, & in the same belief pays the bill at maturity to a bona fide holder for value, he cannot afterwards, if such an interval has elapsed that the position of the holder may have been altered, recover back his money as money paid under a mistake of fact.—**LONDON & RIVER PLATE BANK v. BANK OF LIVERPOOL**, [1896] 1 Q. B. 7; 65 L. J. Q. B. 80; 73 L. T. 473; 1 Com. Cas. 170.**

*Annotations*.—**Consd. Imperial Bank of Canada v. Bank of Hamilton**, [1903] A. C. 49. **Apld. Morison v. London County & Westminster Bank**, [1914] 3 K. B. 356.

**738. — Order with forged indorsement—Credited by defendant bank to customer presenting same—Collected by defendants from bank on which drawn.]—Plffs. received from a co., which was indebted to them, an order (which was not a cheque within 1882 Act) addressed to the co.'s bankers, for the payment of the amount of their debt. The order was stolen from plffs., the receipt being then unsigned. It was subsequently handed to defts., a banking co., with a forged indorsement & receipt thereon, for collection on behalf of a customer of theirs, whom they credited with the amount of it. It did not appear that the customer knew that the order had been stolen. The order was presented by defts. to the bank to which it was addressed, & the amount specified therein was thereupon paid by that bank to them. Subsequently, plffs. gave notice to defts. that the order was stolen from them, & claimed the amount received by defts. upon it. Nothing had in the meantime taken place to debar defts. from cancelling the credit given to their customer as before mentioned:—*Held*: plffs. were entitled to recover the amount received by defts. upon the order as money received for plffs.' use. *Qu.*: whether they were entitled to recover that amount as damages**

# 108 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 3.—Forged or unauthorised signatures. Sect. 4.]*

for the conversion of the document.—*BAVINS JUNR. & SIMS v. LONDON & SOUTH WESTERN BANK*, [1900] 1 Q. B. 270; 69 L. J. Q. B. 164; 81 L. T. 655; 48 W. R. 210; 16 T. L. R. 61; 5 Com. Cas. 1, C. A.

*Annotation:—Reid. Morison v. London County & Westminster Bank*, [1914] 3 K. B. 356.

**739. Property in forged note—Sent by holder to person for discount—Discount refused on discovery of forgery—Right of holder to return of note.]—***Ptlf.* advanced money to A., who brought him a promissory note purporting to be signed by B., his brother. *Ptlf.* was afterwards asked to make further advances, but he declined to do so, unless he was at liberty to discount the note, which had been indorsed to him by A. *Ptlf.* gave the note to C., to get discounted, & C. left it with defts., who discovered that the signature of B. was a forgery, & refused to return the note. A. was convicted of the forgery:—*Held*: (1) the note was handed to *ptlf.* as security for a debt, & in circumstances which gave him a title to the note as against A.; (2) defts. were under an obligation at the time *ptlf.*'s action was brought to restore the note to *ptlf.*, & the fact that B. afterwards notified defts. not to part with the note, did not deprive *ptlf.* of his right to hold the note as against A., & defts. had no right as against *ptlf.* to keep the note.—*BIRD v. DISCOUNT BANKING CO. OF ENGLAND & WALES* (1894), 11 T. L. R. 103.

**740. Evidence of forgery—Admissibility of evidence.]—**In an action against the acceptor of a bill of exchange, who defends himself on the ground of his acceptance being forged by A., evidence that A. forged his acceptance to another bill & absconded on that account, is not admissible.—*BALCETTI v. SERRANI* (1792), Peake, 192, N. P.

*Annotation:—Reid. Griffiths v. Payne* (1839), 11 Ad. & El. 131.

**741. ———.]—**In an action on a bill, which *deft.* contends is a forgery, other bills of *deft.* may be produced to the jury, if literate, to compare the handwriting.—*ALLESBROOK v. ROACH* (1795), 1 Esp. 351; Peake, Add. Cas. 27, N. P.

*Annotations:—Dobd. Doe d. Perry v. Newton* (1836), 5 Ad. & El. 514. *Reid. Doe d. Mudd v. Suokermore* (1837), 5 Ad. & El. 703.

**742. Where a party defends an**

**740 i. Evidence of forgery—of evidence.]—***Ptlf.* sued defts., W., J., & C., on a promissory note alleged to have been made by them jointly & severally. *Ptlf.* had entrusted money to C. for safe keeping & *deft.* W., being in need of money arranged to borrow the money deposited with C., & asked C. if she would indorse for him, to which she agreed. W. alleged that all the signatures were written at the same time with the same ink. C. denied that the signature on the note was hers. Her signature appeared to be written with entirely different ink from the other signatures. On a comparison of certain signatures, of C. proved to be genuine, with the signature on the note:—*Held*: *ptlf.* had failed to prove that *deft.* C. signed the note.—*5 O. W.*

**745 i. ——— Estoppel of a forged—Similar bills previously**  
*Ann.]—*A bank having charged a party whose name appeared upon a bill as acceptor, the latter brought a

action on a bill of exchange, on the ground that his acceptance has been forged, it is not admissible evidence that the party, who negotiated such bill, had been guilty of other forgeries.—*VINEY v. BARSS* (1795), 1 Esp. 292, N. P.

*Annotation:—Reid. Griffiths v. Payne* (1839), 11 Ad. & El. 131.

**743. ———.]—**In an action by the indorsee of a bill against the acceptor, the defence was, that the bill was a forgery. *Deft.* had represented it to be so to certain bankers, who were applied to to discount it for a prior holder, & the bankers wrote a letter, stating what *deft.* had said, & minutely entering into the circumstances:—*Held*: such letter was properly received in evidence preliminarily to the observation which was made upon it by the holder.—*MIERS v. BOWLER* (1838), 2 Jur. 95.

**744. ———.]—**In an action against the acceptor of a bill of exchange, & a plea of *non accepit*, it is not competent to *deft.* to show that the drawer has committed other forgeries in similar transactions. The only evidence admissible on the issue of forgery, raised on a plea of non-acceptance, is such as would have been admissible on an indictment for that offence.—*GRIFFITHS v. PAYNE* (1839), 11 Ad. & El. 131; 3 Per. & Dav. 107; 9 L. J. Q. B. 34; 113 E. R. 363.

**745. Estoppel of party whose name forged—Similar bills previously paid by him.]—**The holder of a bill of exchange sued the person whose name appeared as the acceptor. *Deft.*'s signature had been forged, but he had previously taken up & paid to *ptlf.* one other bill similarly drawn & accepted, & had not given notice to *ptlf.* that he would not pay again in the same circumstances. At the trial the jury found that *deft.*'s name as acceptor was neither written, authorised, nor adopted by him, & that his previous conduct did not lead *ptlf.* to believe that the acceptance was his signature:—*Held*: *deft.* having paid only one similar bill, & that not in the course of business, was not estopped from disputing his liability, & upon the findings of the jury, the verdict was rightly entered in favour of *deft.*—*MORRIS v. BETHELL* (1869), L. R. 5 C. P. 47; 21 L. T. 330; 18 W. R. 137.

a counter issue of adoption, on the allegations that the suspender had paid bills similarly accepted, & that although he had been informed of the currency of the bill in question five weeks before it became due, on his retiring another bill between the same parties, which he then discovered to be a forgery, he did not repudiate the bill charged on until after it became due:—*Held*: the facts averred by reeps. were sufficient to justify inquiry, & the counter issue should be allowed.—*BROWN v. BRITISH LINEN CO.* (1863), 1 Macph. (Cl. of Sess.) 793.—SCOT.

b. ——— Bills delivered by party *Almaly* as genuine.]—Forgery being pleaded in defence against a summons for payment of two bills specially libelled on:—*Held*: it was competent under such summons to

*as persons v. ———*  
*LITTLE* (1831), 9 Sh. 378.—SCOT.

to disclaim

due time—*Whether amounting to*  
bank by whom a bill had been discounted charged the parties whose names appeared on the bill as joint acceptors. They both suspended, alleging that their signatures were forgeries. The bank proposed to take an issue to prove that they had each adopted the bill, upon the allegation that before the bill had become due the bank had informed the suspenders of the existence of the bill by a letter, which, however, made no demand for payment, & that they had neither of them disclaimed their signatures:—*Held*: there was no relevant case stated for an issue of adoption.—*WARDEN v. BRITISH LINEN CO.* (1863), 1 Macph. (Cl. of Sess.) 402.—SCOT.

d. ———.]—From 1891 to 1904 two series of bills purporting either to be drawn by M. on & accepted by C. or drawn by C. on & accepted by M. were discounted by L. Co. Each of these bills substantially a renewal of an immediately preceding bill & as the became overdue, notices stating



**Protection of bankers—Right of bank to charge customers.]—**See, **BANKERS & BANKING**, Vol. III., pp. 230-243.

#### SECT. 4.—SIGNATURE BY PROCURATION.

See 1882 Act, s. 25.

See, also, **AGENCY**, Vol. I., pp. 309-316; **BANKERS & BANKING**, Vol. III., pp. 230-243.

**746. General application of 1882 Act, s. 25.]—**The effect of the above sect. is that if the agent has exceeded his authority the principal may refuse payment of the bill, & persons taking it do so subject to this risk; but where the bill has once been paid, the transaction is complete, & the sect. does not confer a right to recover the proceeds.—**MORISON v. LONDON COUNTY & WESTMINSTER BANK, LTD.**, [1914] 3 K. B. 358; 83 L. J. K. B. 1202; 111 L. T. 114; 30 T. L. R. 481; 58 Sol. Jo. 453; 19 Com. Cas. 273, C. A.

**Annotations:—***Reid*. **Crumplin v. London Joint Stock Bank** (1913), 109 L. T. 856. *Mentl*. **John v. Dodwell**, [1918] A. C. 563; *Taxation Comrs. v. English, Scottish & Australian Bank*, [1920] A. C. 683.

**747. "For A. B. & Co.," "C. D."—Amounts to signature by A. B. & Co.—Application of law merchant.]—**An averment in a declaration that A. B. & Co. accepted a bill of exchange according to the usage & custom of merchants, is supported by evidence that the bill was accepted by C. D. their authorised agent, thus: "For A. B. & Co., C. D."—**HEYS v. HESELTINE** (1811), 2 Camp. 604, N. P.

**748. In name of firm of H. & F.—After change in firm.]—**A declaration by the indorsee against the acceptor of a bill of exchange, averred that the bill had been indorsed to certain persons trading under the firm of H. & F., & that H. & F. had

indorsed the bill by procuration of J. D. to C., from whom pltf. derived title. In proof it appeared that the firm of H. & F. had ceased to exist for ten years prior to the indorsement, but that a new firm of H. & Co. had been established, & that D., one of the members thereof, was in the habit of indorsing bills by procuration in the name of H. & F., but that all other transactions in trade were carried on in the name of H. & Co., only:—*Held*: as between innocent indorsee & acceptor there was sufficient evidence to satisfy the allegation in the declaration.—**WILLIAMSON v. JOHNSON** (1823), 1 B. & C. 146; 2 Dow. & Ry. K. B. 281; 1 L. J. O. S. K. B. 65; 107 E. R. 55.

**Annotations:—***Reid*. **Faith v. Richmond** (1840), 11 Ad. & El. 339; **Kirk v. Blurton** (1841), 12 L. J. Ex. 117.

**749. Acceptance "per pro."—Person taking bill put on inquiry as to authority.]—**A person taking a bill purporting to be accepted by procuration is put upon inquiry to ascertain, before he takes the bill, whether the acceptance is in accordance with the authority given, & the principal is not liable if the acceptance is not within the authority.

A.'s attorney, acting under a power of attorney which, on its true construction, empowered him to accept bills drawn on A. by his agents or correspondents in relation to his private transactions, accepted by procuration a bill drawn on A. by one of A.'s partners for the purpose of raising money to pay the creditors of the firm:—*Held*: (1) the acceptance was unauthorised; (2) persons taking the bill were put on inquiry; (3) A. was not liable.—**ATTWOOD v. MUNNINGS** (1827), 7 B. & C. 278; 1 Man. & Ry. K. B. 66; 108 E. R. 727; *sub nom.* **ATWOOD v. MUNNINGS**, 6 L. J. O. S. K. B. 9.

**Annotations:—***Fold*. **Alexander v. Mackenzie** (1848), 6 C. B. 766; **Stagg v. Elliott** (1862), 12 C. B. N. S. 373. *Reid*. **Withington v. Herring** (1829), 5 Bing. 443; *Re Agraman, Ex p. Rushell* (1844), 3 Mont. D. & Do G. 615; **Bank of Bengal v. Macleod** (1849), 5 Moo. Ind. App. 1; **Smith**

that they were lying under protest & requesting their retrial were sent by the co. to C. who did not reply to these notices. Apart from the sending of them there was no evidence that he was aware of the existence of the bills. In Feb., 1905, at which date a bill for £70 which purported to be drawn by C. on & accepted by M. & which had been discounted by the co., was current, & before any notice as to it had been sent by the co., C. learned of its existence & at once repudiated liability under it in respect that his signature appearing on it was not genuine. In an action by the bank against C. for payment of the £70 contained in the bill it was proved that C.'s name on all the bills had been forged by M.:—*Held*: C.'s silence with reference to the notices as to the earlier bills did not involve adoption of the signature on the bill sued on or bar him from repudiating liability.—**BRITISH LINEN Co. v. COWAN** (1906), 13 S. L. T. 217, 241; 43 Sc. L. R. 512; 8 F. (Ct. of Sess.) 704.—SCOT.

e. ————.]—A party who is not clearly proved to have known of the existence of his forged signature to a note is not stopped on the ground of neglectful standing by, from setting up the forgery against the holder.—**ETHEK v. LASSLE** (1907), Q. R. 33 S. C. 39.—CAN.

f. ————.]—Notice of maturity, given to the apparent indorser of a note payable to order, on which an indorsement has been

l, does not put him on his guard to make inquiries to establish & denounce such forgery, & if he makes no claim & does nothing to prevent the prejudice which is likely to arise from such forgery, he does not make himself liable.—**SOCIÉTÉ PERMANENTE DE CONSTRUCTION DU DISTRICT D'IBERVILLE v. LONGTIN** (1911), Q. R. 40 S. C. 65; 17 R. L. N. S. 236.—CAN.

#### PART IX. SECT. 4.

**747 i. For A. B. Company, Thomas Pepple—Distinguished from signature "per pro."—**An acceptance in the words "for R. & Son, T. P." is not equivalent according to the law merchant to the form "per pro. R. & Son, T. P." The former expression does not, as the latter does, import a special & limited authority to do a specific act; nor does it put the drawer of a bill accepted in that form upon discovery whether the agent has exceeded his authority. Acceptance in the form "for R. & Son, T. P." is to be governed by the general rule of law applicable to principal & agent.—**O'REILLY v. RICHARDSON** (1865), 17 L. C. L. R. 74.—IR.

h. "B. & Co. per A. W. B., Manager"—Note given in performance of contract sealed by company.]—Deft. co. made a promissory note, their signature being made thus: "Burks, Ltd., per A. W. B., Manager." The defence was that the co. did not make the note sued upon, & that it had no authority or power to do so under its charter:—*Held*: this defence could

not prevail.—**EDWARDS v. BLACKMORE** (1918), 43 O. L. R. 105.—CAN.

**749 i. Acceptance "per pro."—Person taking bill put on inquiry as to authority.]—**In an action against the acceptor of a bill of exchange, purporting to be accepted "per pro. the T. Bank, W., manager"; the judge told the jury that, if they believed that W., as manager of the bank, signed the bill by direction of B., & that B. was a director at the time, the acceptance was binding on the bank:—*He*. direction was wrong, having to the fact that the deed of partnership required three directors to form a co., & empowered the co. of directors to make regulations respecting the accepting of bills.—**EVANS v. M'DOWELL** (1863), 14 L. C. L. R. 314; 15 Ir. Jur. 383.—IR.

**749 ii. ———— Knowledge that authority terminated.]—**Defts., foreign merchants, gave H. an agent who had charge of their branch in D. power to sign bills "per pro." of their firm, but subsequently terminated the agency. Thereafter H. was allowed by defts. to indorse some bills "per pro." of them & also to draw cheques "per pro." of them on their account. A firm in which H. was partner drew bills on defts. which H. without their authority accepted "per pro." Pltfs., with knowledge of the termination of the agency but believing that the bills were for uncompleted transactions of defts., discounted them:—*Held*: pltfs. could not recover against defts.—**NORTH OF SCOTLAND BANKING Co. v.**



# 110 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Sect. 4.— *by procuration.*

*v. M'Guire* (1858), 3 H. & N. 554; *Lewis v. Ramsdale* (1880), 55 L. T. 179; *Jacobs v. Morris*, [1901] 1 Ch. 261; *Morrison v. London County & Westminster Bank* (1913), 108 L. T. 379. *Mentd.* *Charrington v. Johnson* (1845), 4 L. T. O. S. 398; *Re Land Credit Co. of Ireland, Ex p. Overend, Gurney* (1869), 4 Ch. App. 460; *Danby v. Coutts* (1885), 29 Ch. D. 500; *Bryant Powis & Bryant v. La Banque du Peuple, Bryant Powis & Bryant v. Quebec Bank*, [1893] A. C. 170.

**750.** ———.]—Where a bill upon the face of it purports to be accepted "*per pro.*" that circumstance is a notice to whoever takes the bill that the acceptor has but a limited authority, & the holder cannot maintain an action against the principal if the authority has been exceeded.—*STAGG v. ELLIOTT* (1862), 12 C. B. N. S. 373; 31 L. J. C. P. 260; 6 L. T. 433; 9 Jur. N. S. 158; 10 W. R. 647; 142 E. R. 1187.

*Annotations*:—*Reid. Charles v. Blackwell* (1877), 2 C. P. D. 151; *Blasell v. Fox* (1884), 51 L. T. 663; *Bryant Powis & Bryant v. La Banque du Peuple, Bryant Powis & Bryant v. Quebec Bank*, [1893] A. C. 170; *Morrison v. London County & Westminster Bank*, [1914] 3 K. B. 356. *Mentd.* *Re Land Credit Co. of Ireland, Ex p. Overend, Gurney* (1869), 4 Ch. App. 460.

**751.** ———.]—Pltf. carried on business as a tobacco merchant in Melbourne, Australia, under a firm name. He also had a London office bearing the firm name, at which the business of purchasing & paying for goods in London & shipping them to Melbourne was carried on. While absent in Australia he appointed an agent at the London office under a power of attorney, describing him (pltf.) as of Melbourne trading as a tobacco merchant under the firm name, & authorising the agent for him (pltf.) & in his name, or in his trading name, "to purchase & to make any contract for the purchase of any goods in connection with the business carried on by me as aforesaid," & to make such purchase either for cash or on credit, with power to modify or cancel the contracts for purchase, & "where necessary in connection with any purchase made on my behalf as aforesaid, or in connection with my business," to make, draw, sign, accept, or indorse any bills of exchange or promissory notes which should be requisite or proper in the premises, & to sign pltf.'s name or his trading name to any cheques on his banking account in London. The agent, purporting to act under the power of attorney, obtained a loan of £4,000 from defts., a firm of cigar merchants in London who had previously had frequent dealings, including loan transactions,

with pltf. On applying for the loan the agent, who was well known to defts., represented that the power of attorney authorised him to borrow money, & that the loan was required for the purposes of pltf.'s business. At the same time he produced to them the power itself, but, being satisfied with his assurances, they did not read it. On receiving the £4,000 the agent handed to defts. as security bills of exchange for the amount accepted in his own name "*per pro.*" pltf.'s firm. He then paid the £4,000 into pltf.'s London banking account, drew it out by cheques drawn by him under the power, & applied it to his own use. Pltf., being at the time in Australia, had no knowledge of the loan transaction. In an action by him against defts. to restrain them from negotiating the bills upon the ground that they had been accepted without his authority, & upon a counter-claim by defts. against pltf. for the £4,000 as money had & received by him to their use:—*Held*: the primary cause of the loss of the £4,000 was the neglect by defts. of ordinary business precautions when lending the money to the agent, & they were estopped by such neglect, & also by constructive notice that the agent had no power to borrow, from claiming it as money had & received by pltf. to their use.—*JACOBS v. MORRIS*, [1902] 1 Ch. 816; 71 L. J. Ch. 363; 86 L. T. 275; 50 W. R. 371; 18 T. L. R. 384; 46 Sol. Jo. 315, C. A.

**752.** Indorsement "*per pro.*"—Person taking bill put on inquiry as to authority.]—An indorsement "*per pro.*" imports that the indorser acts under a special authority, & the person who takes a bill so indorsed does it at his own risk. He is bound to satisfy himself as to the extent of that authority.—*ALEXANDER v. MACKENZIE* (1848), 6 C. B. 766; 18 L. J. C. P. 94; 12 L. T. O. S. 175; 13 Jur. 346; 136 E. R. 1449.

*Annotations*:—*Distd. Richards v. Rugg* (1856), 27 L. T. O. S. 184. *Follid. Stagg v. Elliott* (1862), 12 C. B. N. S. 373. *Reid. Grant v. Norway* (1851), 20 L. J. C. P. 93; *Smith v. M'Guire* (1858), 3 H. & N. 554; *Charles v. Blackwell* (1877), 2 C. P. D. 151. *Mentd.* *Re Sea, Fire & Life Insce.*, 2. *Greenwood* (1854), 18 Jur. 387.

**753.** ——— Whether rule applies to partner signing "*per pro.*"—*Qu.*: whether the rule, that a person taking a bill indorsed "*per pro.*" is bound to take notice of the extent of the authority of the person indorsing, applies to the case of a partner indorsing "*per pro.*"—*SMITH v. JOHNSON* (1858), 3 H. & N. 222; 27 L. J. Ex. 363; 157 E. R. 453.

*MOLLER & Co.* (1881), 8 R. (Ct. of Sess.) 423; 18 So. L. R. ——.—*SCOT.*

**749 iii** ——— *Effect of abuse of authority.*]—Where an agent accepts or indorses "*per pro.*" the taker of a bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority; where an agent has such authority, his abuse of it does not affect a bona fide holder for value.—*BRYANT v. BANQUE DU PEUPLE, BRYANT v. QUEBEC BANK*, [1893] A. C. 170.—*CAN.*

*Admission of authority—amounts to.*]—In an action on a bill of exchange expressed to be accepted, "*per pro.*" by deft.'s clerk, evidence was given of a conversation with deft., in which he stated that A. (the drawer) had drawn a bill on him which pltf. held, & that A. ought to pay it, because it was drawn for his benefit:—*Held*: sufficient proof to the jury of a recognition of

the clerk's authority to accept.—*MORRISON v. SPURR* (1856), 3 All. 288.—*CAN.*

*l. Note signed "per pro."*—*Proof of due execution.*]—When a promissory note is signed by procuration, proof of the due execution of such procuration must be made to entitle pltf. to recover judgment in an *ex p.* suit on the note.—*ETHER v. THOMAS* (1870), 15 L. C. J. 225.—*CAN.*

*m. — By of Authority to bind* S. & J., his wife, M., & W., were sued as makers of four notes signed "The exors. of the estate of the late N., *per pro.* S." M. was called as a witness by pltf., & proved that S. was dead, & that she had left it to him to do what he thought best in winding it up; but she said she never gave him power to make her liable; & that she knew

nothing of these notes:—*Held*: though S. might have sufficient authority as regarded the estate, he clearly had none to bind defts. personally, as they were sued.—*GORE BANK v. MEREDITH* (1866), 26 U. C. R. 237.—*CAN.*

**752 i.** Indorsement "*per pro.*"—Person taking note put on inquiry as to authority—*Onus of proof.*]—A promissory note made by defts. payable to K. or order, was indorsed in the name of K. by T., purporting to sign as agent for K. using the symbol "*per p.p.*" Pltf. bought the note from T. before maturity. No evidence was given, at the trial of an action to recover the amount of the note from defts., of any authority on the part of T. to indorse K.'s name or to sell the note:—*Held*: the *onus* was upon pltf. & although he had given value in good faith, he had not shown his title to the note.—*HAMILTON v. ISAACSON* (1912), 21 W. L. R. 333; 5 D. L. R. 114.—*CAN.*

**754. — Sufficiency of inquiry.]**—In an action to recover the value of cheques indorsed without authority & cashed by defts., the cheques being the property of the M. co. & indorsed on behalf of that co. by R., a clerk in their employment, who misappropriated the proceeds, & was subsequently prosecuted & convicted for the fraud, it appeared that R. went to defts'. shop & saw D. the manager, to whom he said that he had got no stamps to get on with, & presented a cheque for £12 payable to the M. co., for which he requested D. to give him half the amount in stamps & half in cash. The cheque was payable to order. On the back it was stamped with the words "For the M. Co." to which was added R.'s signature. D. gave R. the amount half in cash & half in stamps. R. had no authority to indorse cheques. Defts. contended that the facts were sufficient to imply an authority in R. to indorse the cheques & that, as R. had assumed an act on behalf of his employers, not asking for the money for himself, defts. were justified in assuming that he had authority:—*Held*: (1) a person, who took cheques endorsed "*per pro.*" without knowing anything certain of the person who indorsed them, did so at his peril; (2) it was not enough that R. came & said he had authority, & the jury must be satisfied that defts. were justified in assuming, without inquiry & without communication with the employers, that R. had authority to indorse the cheques; (3) judgment should be for plffs.—**EMPLOYERS' LIABILITY ASSURANCE CORPN. v. SKIPPER & EAST** (1887), 4 T. L. R. 55.

**755. — Effect of abuse of authority.]**—Where an agent accepts or indorses "*per pro.*" the taker of a bill or note so accepted or indorsed is bound to inquire as to the extent of the agent's authority, & where an agent has such authority, his abuse of it does not affect a *bond fide* holder for value.—**BRYANT POWIS & BRYANT v. LA BANQUE DU PEUPLE, BRYANT POWIS & BRYANT v. QUEBEC BANK**, [1893] A. C. 170; 72 L. J. P. C. 68; 68 L. T. 546; 41 W. R. 600; 9 T. L. R. 322; 1 R. 336, P. C.

*Annotations*:—*Reffd.* Gompertz v Cook (1903), 20 T. L. R. 106; Hambro v. Burnand, [1904] 2 K. B. 10. *Mentd.* Jacobs v. Morris, [1901] 1 Ch. 261.

**756. — ]**—A., manager of the firm of B. & Co., debt collectors, had authority *inter alia* to indorse bills & cheques sent in payment to B. & Co. "*per pro.* B. & Co., A.," for the purpose of paying them into B. & Co.'s banking account. A. took six bills to deft., some being indorsed "B. & Co." & others "B. & Co. *per pro.*," & asked deft., who knew A. as B. & Co.'s manager, to obtain cash for them for the purpose of paying wages. Deft. obtained from his bank the full face value of the bills & handed it over to A., who misappropriated it. The jury having found A. had no authority to indorse otherwise than "*per pro.*," that B. & Co. had not held out A. as having a general authority to indorse or to cash bills, that the bills indorsed "*per pro.*" were so indorsed for the purpose of defrauding B. & Co., & that deft. was a *bond fide* holder for value:—*Held*: (1) as to the bills not indorsed "*per pro.*," B. & Co. were entitled to recover; (2) as to the bills indorsed "*per pro.*," A. had no authority to negotiate them but only to pay them into B. & Co.'s bank, &

B. & Co. were entitled to recover.—**GOMPERTZ v. COOK** (1903), 20 T. L. R. 106.

*Annotation*:—*Reffd.* Morison v. London County & Westminster Bank, [1914] 3 K. B. 356.

**757. Cheque drawn "*per pro.*"—Notice of agent's limited authority to draw.]**—Defts'. manager, who had authority to draw on defts'. banking account for the purposes of their business, but had no authority to overdraw the account, or to borrow money on behalf of defts., borrowed £20 from plff., stating that he wanted the money to pay the wages of defts'. workmen, & gave as security a cheque signed in his own name by procuration for defts. The manager had overdrawn defts'. banking account, & he borrowed the money for his own purposes, to replace money of defts. which he had abstracted, but he paid the money in to the defts'. account at their bank, & used it to pay the wages of the defts'. workmen. In an action on the cheque, & to recover the amount as money received to the use of the plff.:—*Held*: as, by virtue of 1882 Act, s. 25, plff. must be taken to have had notice that the agent had but a limited authority to sign, & defts. could only be bound if the agent acted within the limits of his authority, the claim on the cheque must fail.—**REID v. RIGBY & CO.**, [1894] 2 Q. B. 40; 63 L. J. Q. B. 451; 10 T. L. R. 418; 10 R. 280, D. C.

—*Reffd.* Reversion Fund & Insee. v. Malson, [1913] 1 K. B. 364. *Mentd.* Jacobs v. Morris, 1 Ch. 816; Burdett v. Horne (1911), 27 T. L. R.

**758. — ]**—A line of steamers, the property of different sets of co-owners, was managed by T. & Co. T. & Co. assigned to plffs. money alleged to be due to them from the owners of two of the steamers, & in consideration of the assignment plffs. cashed cheques drawn by T. & Co. "*per pro.* owners." The cheques were dishonoured. In an action by plffs. against owners:—*Held*: plffs. having taken the with notice that the authority of T. & Co. limited, the owners were not liable for the amounts of the cheques.—**NATIONAL BANK OF SCOTLAND v. DEWHURST, THE GONCHAR & THE** (1896), 1 Com. Cas. 318.

**759. — Cheques given for racing debts.]**—A., a manager in the service of plffs., who were insurance brokers, gave cheques drawn "*per pro.*" plffs. to deft. in payment of his (A.'s) racing debts. A. had authority to sign cheques "*per pro.*" plffs. for the purposes of the latter's business:—*Held*: plffs. were entitled to recover the amount of the cheques from deft., as deft. must be taken to have had notice that the cheques were signed for purposes outside plffs'. business & that A. had only power to draw cheques confined to that business, & as there was no evidence that plffs. had held out A. as having authority to draw the cheques in question.—**MORISON v. KEMP** (1912), 29 T. L. R. 70.

—*Mentd.* Morison v. London County & Westminster Bank (1913), 106 L. T. 379.

**760. — Cheques paid on forged indorsements.]**—A series of cheques crossed "not negotiable" & drawn in favour of a person other than the customer, were paid by the customer into his banking account with defts., the indorsements being forged:—*Held*: the fact that some of the cheques were signed "*per pro.*" plff. merely



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## 4.—Signature by procuration. Sect. 5.]

operated as a notice that the drawer of the cheques had a limited right to sign them.—**CRUMPLIN v. LONDON JOINT STOCK BANK** (1913), 109 L. T. 856; 30 T. L. R. 99; 19 Com. Cas. 69.

## SECT. 5.—SIGNATURE AS AGENT OR IN REPRESENTATIVE CAPACITY.

See 1882 Act, ss. 20, 31 (5).

**761. Person signing personally liable—Unless clear & express terms used to limit liability—“As executors.”**—A promissory note, by which the makers, as exors., jointly & severally, promise to pay on demand, with interest, renders them personally liable

If they meant to limit their liability why did they not add to the words “as exors.” the words “out of the estate of” [testator] (**DALLAS, C.J.**).—**CHILDS v. MONING** (1821), 2 Brod. & Bing. 460; 5 Moore, C. P. 282; 129 E. R. 1044.

*Annotations* :—**Consd.** **Aspinall v. Wake** (1833), 10 Bing. 51. **Apld.** **Barnard v. Pinfrett** (1841), 5 My. & Cr. 63. **Consd.** **Croft v. Beale** (1851), 17 L. T. O. S. 144. **Refd.** **Ridout v. Bristow** (1830), 1 Tyr. 84; **Holland v. Clark** (1842), 1 Y. & C. Ch. Cas. 151.

**762.** ————.]—Exors. carried on their trade in that character, & in the ordinary

## PART IX. SECT. 5.

**761 i. Person signing personally liable**—Unless clear & express terms used to limit liability.]—The drawer of a bill of exchange cannot plead agency, unless it is shown on the face of the bill that he drew it as an agent.—**PROOU v. RAM KISHEN** (1865), 2 W. R. 301.—**IND.**

**761 ii.** ————.]—Where a person executes a promissory note without either before or at the time of execution thereof disclosing the fact that he does so merely as an agent, the executant is personally liable on the note.—**ULLAH v. KUNWAR ANAND** (1920), 1 L. R. 42 All. 642.—**IND.**

**761 iii.** ————.]—“Executors” added after signature.]—Defts. as exors. pur- goods of piffs., & gave notes, months after date we, as extrix, & exors. of the late B. P., etc., by defts. “extrix. & of B. P., decd.”—**Held**: they were personally **KERR v. PARSONS** (1862), 11 C. P. 313.—**CAN.**

**761 iv.** ————.]—In an action on a promissory note payable on signed by deft. as “exor. of an estate,” but not expressly restricted to payment out of the estate:—**Held**: deft. was personally liable.—**UNION BANK OF CANADA v. MCKAY**, 21 C. L. T. 409, 496.—**CAN.**

**761 v.** ————.]—In an action against an extrix. upon a promissory note, on which she is personally liable, a plea on equitable grounds, which that the note was made by he drawn so as to charge her personally, the intention of all the parties being that testator’s assets only should be charged, is a bad plea, as deft. would not be entitled to unconditional relief in equity.—**M’GILLICUDDY v. GALWEY** (1868), 1 R. 2 C. L. 237.—**IR.**

**761 vi.** ————.]—In an action for pa ut by the onerous holders of a bill accepted by the exors. of a party deceased, as such, it is no defence

course of the business accepted a bill of exchange describing themselves in it simply as exors. of their testator:—**Held**: neither the above circumstances, nor the form of the acceptance, relieved the estate of one of the exors., who died in the lifetime of the other, from the ordinary equitable liability upon the bill.—**LIVERPOOL BOROUGH BANK v. WALKER** (1849), 4 De G. & J. 24; 45 E. R. 10, L. JJ.

*Annotations* :—**Mentd.** **Kendall v. Hamilton** (1878), 3 C. P. D. 403; **Re Hodgson, Beckett v. Ramsdale** (1885), 31 Ch. D. 177.

“Manager” added after signature—**Directors & manager signing “for the company.”**—Action on a bill of exchange made by R. directed to A., B., C., D., E., & F., & accepted by them. Pleas, That R. did not make the bill in manner & form, etc., & that A., B., & C. did not accept in manner & form, etc. Issues thereon. The bill, produced at the trial, was drawn upon the directors of the I. S. Co., & accepted “for the co.” by D. & E., signing as directors. F. signed his name with theirs as “manager.” All defts. were shareholders, & all but F. were directors. The jury found that F., as manager, was not an acceptor of the bill. It was not put to them to say, nor did counsel desire that they should be asked, whether or not D. & E. had authority to bind the co. by acceptances:—**Held**: F. was not, in point of law, liable as an acceptor, either by his having actually signed his name with those of D. & E., or by their having accepted the bill as directors

that they have no executory funds.—**EATON, HAMMOND & SONS v. M’GREGOR’S EXECUTORS** (1837), 15 Sh. (Ct. of Sess.) 1012.—**SCOT.**

**761 vii.** ————.]—Payees looking to company only.]—The directors of a limited co. gave promissory notes on behalf of the co., but signed them with their own names, not as directors of the co., & the payees of the notes took them as binding on the co. & did not suppose that the directors were in any way personally responsible on them:—**Held**: the payees could not recover.—**DICKENS & CO. v. INGRAM** (1892), 18 V. L. R. 675.—**AUS.**

**763 i.** ————.]—Signature followed by description—As officer of unincorporated association.]—The maker of a promissory note whose signature thereon was followed by words describing him as an officer of an assocn., which was unincorporated:—**Held**: personally liable thereon.—**AUSTIN v. HOBBS**, 1 W. W. R. 994.—**CAN.**

—.]—In an action brought by indorsees on a promissory note signed by defts. as president & secretary of a co., which at the date of the note was not incorporated:—**Held**: defts. were liable.—**JARDINE v. ROWLEY** (1882), 3 R. & G. 244.—**CAN.**

**763 iii.** ————.]—“Tr.” added after signature—Bill drawn on acceptor by name—But described as treasurer of .]—The C. Ry. Co. being indebted to H., he agreed to accept for a portion of the debt the bill of the co. To effect this intention deft. who was the co.’s treasurer, filled in one of the printed forms of bills used by him as such treasurer for the co.’s acceptances, the bill being stated to be drawn on deft. as “T., Tr. C. Ry. Co.” & it was accepted by him as “T., Tr.” The bill was signed by H. as the co.’s acceptance, & he signed the co.’s ordinary voucher. H. afterwards indorsed it for value to piffs., who also took it believing it to be the

co.’s acceptance:—**Held**: deft. was personally liable as acceptor.—**LAING v. TAYLOR** (1876), 26 C. P. 416.—**CAN.**

“Chairman” & “Treasurer” added after signature.]—Defts. M. & P., chairman & treasurer, respectively of a Board of Managers of a Church—a body not incorporated—accepted a bill of exchange drawn by B. who had contracted to build a manse for the Board, adding the words “Chairman” & “Treasurer” after their respective names. In an action on the bill:—**Held**: defts. were personally liable.—**MCDUGALL v. MCLEAN** (1893), 1 Terr. L. R. 450.—**CAN.**

**763 v.** ————.]—Added after signatures.]—Action on a promissory note first signed by a joint stock co. & then by the president & two directors. After the name of the president was the abbreviation “Dir.,” while after the name of one of the directors was the abbreviation “Mgr.,”—**Held**: the co. & the three individuals are liable.—**UNION BANK OF v. CROSS & EVERARD** (1909), W. L. R. 539.—**CAN.**

“Treasurer” & “Reeve” added after signature.]—The council of a township corpn. purported, by bye-law, to authorise the treasurer & reeve to borrow from a chartered bank money to be used for drainage purposes. Accordingly the treasurer made a promissory note which he signed in his own name with the words “treasurer of the township of R.” after it, in favour of the reeve, & the reeve indorsed it, signing his own name with the words “reeve of R.” after it. This note was discounted by the bank, the proceeds placed to the credit of the corpn. account kept in the name of “A. M., treasurer of R.” & paid out for the drainage purposes. The bank went into liquidation, & the liquidators sued the reeve & treasurer in their personal capacities upon the



of a co. in which he held shares, & pltf. failed on both issues.—**BULT v. MORRELL** (1840), 12 Ad. & El. 715; 10 L. J. Q. B. 52; 5 J. P. 224; 113 E. R. 996.

*Annotations*.—**Distd. Bottomley v. Fisher** (1862), 1 H. & C. 211. **Reid. Owen v. Von Uster** (1850), 16 L. T. O. S. 194. **Mentd. Jenkins v. Morris** (1847), 9 L. T. O. S. 151; **Lindus v. Bradwell** (1848), 17 L. J. C. P. 131.

**764.** ——— “**For J. C., R. M., J. P., & T. S.**” “**R. M.**.”—J. C., R. M., J. P., & T. S., carrying on business as bankers, a promissory note in the following form was signed by R. M.: “I promise to pay bearer, on demand, £5, value received.” “For J. C., R. M., J. P., & T. S.” “R. M.”:—**Held**: the holder of the note had not a separate right of action against the party so signing, but the firm were liable.—**Re CLARKE, Ex p. BUCKLEY** (1845), 14 M. & W. 469; 14 L. J. Ex. 341; 153 E. R. 559.

*Annotations*.—**Reid. Nicholls v. Diamond** (1853), 9 Exch. 154; **MacLae v. Sutherland** (1854), 3 E. & B. 1.

**765.** ——— “**Trustee of the company** **Bill addressed to trustees of A. company.**”—A bill of

note, which matured after the winding-up order:—**Held**: debts were personally liable upon the note.—**KENT v. MUNROE** (1904), 8 O. L. R. 723; 4 O. W. R. 468.—**CAN.**

n. ——— “**Trustees**” added after signature.]—Two school trustees having petitioned the council for a loan “offering to bind themselves to pay the interest & principal,” gave two instruments, as follows: “We, the undersigned, trustees of school section No. 11, do hereby promise to pay the treasurer of the corp. of T. township, on,” etc. This was signed by debts. in their own names followed by the word “trustees,” & the corporate seal was affixed:—**Held**: debts were not personally liable on the notes.—**TORONTO TOWNSHIP v. McHURD** (1869), 29 U. C. R. 13.—**CAN.**

**764 l.** ——— **For the U. F. A., Ltd.**—The acceptance of a draft by writing thereon the word “accepted” & signing it, with the added words “for the U. F. A., Ltd.,” is not the personal acceptance of the drawee & he therefore incurs no personal liability thereby.—**SMITH v. M.** Q. R. 408. C. 75.—**CAN.**

o. ——— **The N. C. Co. per L. S.**—In an action, upon a promissory note for \$1,700, dated Feb. 23, 1915, made by debts. to order of pltf. & indorsed “The N. C. Co. per L. S.,” against L. S. as indorser & as a member of the firm or partnership of the N. C. Co.:—**Held**: L. S. was not personally liable as an indorser.—**(W. A.) & Co. v. NATIONAL Co.** (1917), 11 O. W. N. 309; *affd* 12 O. W. N. 58.—**CAN.**

—“A. & Co., by A. junr.,” *prima facie* imports that A. signs the notes for, & not as one of, the firm.—**DOWLING v. EASTWOOD** (1847), 3 U. C. R. 376.—**CAN.**

q. ——— **Signature by manager** —Over rubber stamp bearing name of company.]—The words “K. E. C.” followed by a dotted line, at the end of which were the letters “Mgr.,” were placed on a promissory note by means of a rubber stamp. Just above the letters “Mgr.” appeared the name “C. A. K.” in handwriting:—**Held**: the rubber stamp, coupled with the hand-written signature, constituted the signature of the co. to the note, & “C. A. K.” was not liable thereon.—**ELECTRIC & MFG. Co. v.**

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exchange was described in the declaration as directed to & accepted by debt. The bill was addressed “to the trustees of the A. Co.,” & accepted by debt., describing himself as “trustee of the co.” It was proved that the acceptance was in debt.’s handwriting, & that he was a trustee:—**Held**: sufficient proof of the acceptance at law.—**KIFTS v. GILLINGHAM** (1850), 15 L. T. O. S. 97, N. P.

**766.** ——— “**First minister of Zanzibar Government.**”—A bill of exchange was drawn by pltf. upon debt., & accepted by him, but after his name he wrote the words, “First Minister of the Zanzibar Government”:—**Held**: the words, taken by themselves, made no alteration in the effect of debt.’s signature.—**FORWOOD BROTHERS & Co. v. MATHEWS** (1893), 10 T. L. R. 138, D. C.

**767.** ——— **Equitable plea of mistake.**—**Chairman signing for company.**—To an action on a bill of exchange the ct. allowed debt. to plead, by way of an equitable defence, leaving its validity to be

**KASOW ELECTRIC & (1914),**  
29 W. L. R. 582.—**CAN.**

.)—H., debt., the director of a co. indebted to pltf., when applied to for payment signed notes covering the indebtedness in his own name. In an action upon the notes:—**Held**: oral evidence that it was debt.’s intention to use a rubber stamp printing the name of the co. above his own, was inadmissible.—**LINDSAY-WALKER v. HILSON** (1916), 34 W. L. R. 299; 10 W. W. R. —**CAN.**

s. ——— **Signature as agent**—**Principal not indicated.**—A person who signs a promissory note & adds to his signature the word “attorney,” without indicating on the note the name of the principal on whose behalf he signs, is not exempt from personal liability.—**HAMILTON v. JONES** (1896), Q. R. 10 S. C. 496.—**CAN.**

t. ——— .]—Pltf. sued debt. on cheques signed by debt. & indorsed by the payee to pltf. Debt. pleaded that he signed the cheques merely as agent & as that appeared on the face of the cheques & both payee & pltf. had knowledge of the fact there was no right of action against him personally. The name of the principal was not indicated on the cheques nor had debt. ever made known the name of his principal to pltf.:—**Held**: debt. was personally responsible.—**ROYAL BANK OF CANADA v. DOUGLAS** (1908), 4 E. L. R. —**CAN.**

of .]—A., promissory note in the following terms: “We, the undersigned, in the name & on the behalf of the R. P. C., promise to pay,” etc.:—**Held**: A., B., & C. were personally liable for payment of the note.—**M’MURKIN v.** (1889), 16 R. (Ct. of Sc. L. R. 243.—**SCOT.**

as **mittee & congregation of chapel.**—A small congregation of dissenters who had no settled minister were in the habit of hiring a hall as a place of worship. For the rent of this hall a note was granted by four individuals, styling themselves the committee & congregation of the chapel, conjointly & severally:—**Held**: the note was binding on them personally.—**ROSS v. YOUNG** (1831), 9 Sh. (Ct. of

o. ——— **Signature as trustee of temple or charity.**—A person drawing a hundl or bill of exchange or making a promissory note as trustee of a temple or of a charity is personally liable on such bill or note.—**PALANIAPPA CHEHAIR v. SHANMUGAM CHEHAIR** (1918), 41 Mad. 815.—**IND.**

d. ——— **Described in bill as factor of named principal.**—A bill drawn by the law-agent of I. upon factor for £1,500, “value in acco with I.” The acceptor was designated in the bill “Factor of I.”:—**Held**: the acceptance was to be held not as that of I. binding himself through the medium of his factor, but as the individual acceptance of the factor, & so attaching liability to him alone in his own proper person.—**CHIRKE v. WESTERN BANK** (1848), 10 Duul. (Ct. of Sess.) 1523.—**SCOT.**

e. ——— **No intention that party should be liable**—**No express agreement.**—Debt., the inspector of an insurance co., having arranged with pltf. as to the amount of pltf.’s claim for a loss, gave pltf. the following bill: “\$875. To the B. Insurance Co., T., Nov. 6, 1876. Three months after date pay to the order of Hagarty, at O., \$875, being payment in full of his claim under policy No. 71,514, for loss & damage by fire on Oct. 27 last. (Signed). A. S., Inspector.” Pltf. did not suppose that debt. would be, nor did debt. intend to make himself, liable, but it was agreed, that pltf. should get a bill on which the co. would be, but there was no express agreement or understanding that debt. should not be liable:—**Held**: debt. was personally liable.—**HAGARTY v. SQUIER** (1877), 42 U. C. R. 165.—**CAN.**

in note as **attorney.**—Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the note. Merely describing oneself in the note as the holder of a power-of-attorney from another does not show that the power included a power to sign promissory notes or that the note was signed in pursuance of the power.—**KONERT NAICKER v. GOPALA AYYAR** (1913), 1 L. R. 38 Mad. 482.—**IND.**

g. ——— **Note made by club signed by president & secretary**—**Alleged representation of authority by president.**—

**Sect. 5.—Signature as agent or in representative**

questioned on demurrer, that deft. was chairman of a registered co., that the bill was drawn for the co.'s purposes, & accepted by deft., as chairman of the co., that, in order to bind the co., it ought to have been accepted by another director also, &

counter-signed by the secretary, that by mistake or accident that was omitted to be done, & that it never was intended that deft. should be bound personally.—**BURGOYNE v. COTTRELL** (1854), 24 L. J. Q. B. 28.

See, further, **AGENCY**, Vol. I., pp. 309–316, 643–648.

**Part X.—Consideration.****SECT. 1.—WHAT CONSTITUTES CONSIDERATION.**

1882 Act, s. 27 (1) (a).

, generally, **CONTRACT**.

**. 1.—DEBT.**

s 1882 Act, s. 27 (1) (b).

**768. Antecedent debt—& present advance.]—**

Action by indorsees against indorser of a promissory note for £500. Plea, except as to £200, that the note was made & delivered to deft. in order that he might indorse it for the accommodation of the maker, to enable him to obtain advances of money thereon, that plffs. had only advanced to the amount of £200, & that there was no consideration for the residue. Replication, that plffs. were the holders of the note for good & valuable consideration given to the maker in respect of their being the holders of the note to the full amount thereof:—*Held*: it having been proved that more than £500 being due from the maker to plffs. at the time the note was paid to them, they entered the note as a bill discounted to his credit, but that £198 only was actually paid to him, that was equivalent to their having advanced the amount mentioned in the note, & was a giving of a valuable consideration within the issue.—**PERCIVAL v. FRAMPTON** (1835), 2 Cr. M. & R. 180; 3 Dowl. 748; 5 Tyr. 579; 4 L. J. Ex. 139; 150 E. R. 78.

—*Raid*. **Isaac v. Farrar** (1836), Tyr. Gr. Mills v. Barber (1836), 1 M. & W. 425.

**time of dishonour.]—**

by payees of a foreign bill against drawers. Plea, that the bill was sold by defts. to C. on one foreign post day, on the terms of being paid according to usage on next foreign post day, that C. purchased the bill as agent for H., & remitted the

bill to plffs. as such agent, & plffs. received it for collection for H., that, before the next foreign post day, C. failed, & did not pay the price, that there was no value as between C. & H., or as between C. & plffs., & that plffs. were holders without value. *De injuria*. C. was a London merchant, & plffs. Paris merchants, both correspondents of H., an American merchant. H. was indebted to both C. & plffs. Plffs. wrote to H. for a remittance. H. sent to C. a bill on London, for an amount exceeding H.'s debt to C., desiring him to realise it, pay himself his own account, & remit the balance to plffs. C. realised the draft, credited H. with the proceeds, & bought of defts., in the ordinary course in London, a bill, for the amount of the balance due to H., which bill was to be drawn by defts. payable to plff.'s order, to be delivered by defts. to C. in London on one foreign post day & paid for to them by C. on the next. The bill in question was drawn, & delivered to C., & sent by him to plffs., who, by letter to C., acknowledged the receipt on account of H., & stated that they would advise H. thereof. Before the next foreign post day, after the delivery of the bill to C., C. failed. Defts. never received anything for their bill; they directed the drawee not to honour it, & it was dishonoured. Afterwards H. paid plffs. in full. The action was in the name of plffs. for H.'s benefit:—*Held*: plffs. were holders for value, as they held the bill at the time of its dishonour on account of the debt from H. to them, & the subsequent assignment of the equitable interest to H. did not affect plffs.' right to sue at law.—**POIRIER v. MORRIS** (1853), 2 E. & B. 89; 22 L. J. Q. B. 313; 17 Jur. 1116; 1 W. R. 349; 1 C. L. R. 429; 118 E. R. 702.

*Annotations*.—*Raid*. **Currie v. Misa** (1875), L. R. 10 Exch. 153. *Mentd*. **Wright v. Chappell** (1869), 20 L. T. 369.

**770. — Money expended on bets.]—**To an action on a bill of exchange, drawn by B. upon, & accepted by, deft., & indorsed by B. to plff.,

Plffs. sued deft. as maker of promissory notes in the following form: 8 months after date, the C. Club promise to pay to the order of B. \$497, for value received. Signed by deft., president of the club, & by the secretary. The fourth count of the declaration alleged that deft. promised plffs. that he had authority from the members of the club to make the notes, & that if plffs. would discount them, they should be paid by the members; that the mem authorized deft. to make

pay or be held responsible therefor. was no evidence of any promise what might be inferred from

signature as president, & it was not shown that the club had ever repudiated their liability:—*Held*: deft. was not liable on the fourth count.—**BANK OF OTTAWA v. HARRINGTON** (1878), 28 C. P. 488.—CAN.

**PART X. SECT. 1, SUB-SECT. 1.**

*In* A pre-existing debt is a good consideration in whole or in part for a note or bill.—**HILLIS v. TEMPLETON** 7 U. C. L. J. O. S. —CAN.

C. P. 241.

s. S. P. **UNION BANK OF** 21 C. L. T. 408, 496.

d. — security.]—*Held*: a pre-existing debt is a good consideration for a promissory note, & not the less so from a mtge. on real estate having been taken to secure the same debt.—**BANK OF UPPER CANADA v. BARTLETT** (1862) 12 C. P. 238.—CAN.

e. — .]—*Held*: an antecedent debt is a good consideration for a note transferred as collateral for the debt.—**CANADIAN**

an action upon a promissory note by deft. it is



deft. pleaded, that, before the accepting of the bill, deft. authorised B., in his own name, but on account of deft., to lay bets on horse races, & B., in pursuance of such authority, laid such bets & lost them, that B. afterwards voluntarily, & without the request of deft., paid the losses on such bets, that the bets were wagering contracts, & that deft. accepted the bill for repayment to B. of the money which he had so paid, & that there was no other consideration for the acceptance & no consideration for the indorsement:—*Held*: the plea was bad, for deft., by giving the bill, acknowledged the money was paid on his account, & there was sufficient consideration for the payment of the bill.—*OULDS v. HARRISON* (1854), 10 Exch. 572; 24 L. J. Ex. 66; 24 L. T. O. S. 220; 3 W. R. 160; 3 C. L. R. 353; 156 E. R. 566.

*Annotations*:—*Fold*. *Jessopp v. Latwyche* (1854), 10 Exch. 614. *Reid*. *Thacker v. Hardy* (1878), 4 Q. B. D. 685. *Mentd*. *Homes v. Kidd* (1857), 1 F. & F. 82; *Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq. 344; *Re Anglo-Greek Steam Navigation & Trading Co., Carrall & Co's Claim* (1869), 4 Ch. App. 174.

Effect of illegal or void consideration, Sect. 6, sub-sect. 2, *post*.

**771. — Payable within given time.**—Upon a dissolution of partnership an agreement was entered into, which provided that deft., one of the partners, should pay the other partner £2,000 within three years of the date of the agreement with interest on same, or on the instalments thereof for the time being unpaid, computed from the date of the dissolution of partnership. Subsequently deft. gave to the other partner, at his request, a promissory note payable on demand for the same sum & bearing the same interest. In an action on the note by the extrix. of the payee:—*Held*: pltf. was entitled to recover, as there was good consideration for the promissory note, for where there was a debt existing *in presenti* but payable within a period of time & not on a fixed day *in futuro*, so that debtor was entitled to pay the sum owed at any time at his option, there was good consideration for a promissory note payable on demand given by debtor & accepted by the creditor for the amount of that debt.—*STOTT v. FAIRLAMB* (1883), 53 L. J. Q. B. 47; 49 L. T. 525; 32 W. R. 354, C. A.

**772. — Overdrawn banking account.**—Deft., on Feb. 11, purchased of L. in London certain bills on Cadiz at 15 days' date, which, by the custom of the trade, were to be paid for on the next post day, which was Feb. 14. L. was largely

indebted to pltf., his bankers, & in consequence of pressure on their part he, on the 13th, handed to them, with other securities, a document, impressed with a penny stamp, dated Feb. 14, requesting deft. to pay to pltf. the price of the bills which he had purchased. On the 14th deft.'s agent handed pltf. a cheque for that amount, & received the other document in exchange, but the same afternoon, hearing that L. had stopped payment, he directed deft.'s bankers not to pay the cheque. The bills were remitted to Cadiz, & were refused acceptance. In an action upon the cheque:—*Held*: (1) the bills upon Cadiz were a good consideration for the cheque, & their subsequent dishonour was no defence to the action; (2) the pre-existing debt from L. to pltf. made them holders for value of the order drawn by him on deft., & not merely agents for collection.—*MISA v. CURRIE* (1876), 1 App. Cas. 554; 45 L. J. Q. B. 852; 35 L. T. 414; 24 W. R. 1049, H. L.; *affg.* *S. C. sub nom. CURRIE v. MISA* (1875), L. R. 10 Exch. 153, Ex. Ch.

*Annotations*:—*Consd.* *M'Lean v. Clydesdale Banking Co.* (1883), 9 App. Cas. 95. *Appld.* *Stott v. Fairlamb* (1883), L. J. Q. B. 47. *Consd.* *Fleming v. Bank of New* [1900] A. C. 577. *Reid.* *Re Matthews, Ex p.* (1884), 12 Q. B. D. 506; *Elwell v. Jackson* T. L. R. 454; *Nash v. De Freville* (1900), 69 L. J. Q. B. 484. *Mentd.* *Hogarth v. Latham* (1878), 47 L. J. Q. B. 339; *Re Romer, Ex p. Snell* (1893), 62 L. J. Q. B. 610; *Banbury v. Bank of Montreal*, [1918] A. C. 626.

**773. — — — — —**—On a Saturday A. granted a cheque on his account with the Bank of S. for (*inter alia*) £250, crossed blank in favour of B. On the same day B. indorsed the cheque, & paid it into the Bank of C., of which he was a customer. The Bank of C. immediately on receipt of the cheque carried the amount to B.'s credit, & thus reduced a debit balance standing against him. On the Monday following A. stopped payment of the cheque at the Bank of S., & when the Bank of C. presented it, payment was refused. The Bank of C. sued A. in the Sheriff's Ct. for the amount. On appeal, the Ct. of Session found that the cheque was granted to B. to reduce the balance at his debit with the Bank of C., that A. the cheque should be so used, & that in pursuance of that agreement the cheque was indorsed to Bank of C. & given to them as cash, & the contents being put to B.'s credit the balance at his debit was thereby reduced:—*Held*: it followed from the above findings as a matter of law that the Bank of C. were onerous holders of the cheque, & the Bank of S. not having paid the cheque on

that he had had many transactions executed through pltf.'s principals, involving buying & selling on his account large quantities of shares & grain. Statements furnished him showed not only, what he stood to win or lose, but also that pltf. were advancing money to keep his deals good against the market until such time as he should direct them to be closed. Deft. contended that he gave the note as a security for margins, relying on representations of pltf. that a sum was necessary to re-margin certain transactions, & not as an acknowledgment of any definite debt to pltf.:—*Held*: by the note he acknowledged that he was indebted to pltf. on his account, & there was good consideration for the note.—*CARPENTER v. PEARSON*, (1904) 3 O. W. R. 483; *reced.*, 36 S. C. R. 380.—*CAN.*

**g. — Price of chattel sold.**—

Pltf. was one of a number for purchase of a fish-trap, the whole of the purchase M., one of the associates, sold half interest to deft., & a note signed by M. & deft. was delivered to pltf. to be credited on M.'s debt to pltf. on account of the purchase, pltf. having refused to take deft.'s note without security:—*Held*: there was good

(8 R. G.) C. L. T. R. *CAN.*

to two promissory notes in payment for a horse purchased from B.:—*Held*: the past indebtedness of B. constituted good consideration for the notes.—*CANADIAN BANK OF COMMERCE v. McLEOD* (1915), 30 W. L. R. 537; 7 W. W. R. 1115.—*CAN.*

**k. — — — — —**—Pltf. sued upon two promissory notes signed by deft.,

for \$1,000. Some time before the date of either note pltf. advanced the \$2,000 for which the notes were given & deft. was indebted to pltf. to the amount of the notes: pltf. was entitled to the amount of the notes:—*KELLY* (1919) 16 O. W. N. —*CAN.*

**l. — — — — —**—Pltf. of a ship delivered to the purchaser a bill of sale, & did not deliver that the seller of a ship is to do to complete the sale, & registration of the bill of

the delivery & execution of the bill of sale or the delivery of possession, much more so the two taken together, were sufficient consideration to support a bill of exchange given by the purchaser to the seller in part of the price.—*TERINGTON* (1841), 2 M. 110.—*S. AF.*



**Sect. 1.—What constitutes consideration: Sub-**

demand, the ct. below was right in holding that A. was liable.—**M'LEAN v. CLYDESDALE BANKING CO.** (1883), 9 App. Cas. 95; 50 L. T. 457, H. L.

**Annotations:—***Reid.* National Bank v. Silke, [1891] 1 Q. B. 435; *Capital & Counties Bank v. Gordon*, London City & Midland Bank v. Gordon, [1903] A. C. 240; *Dey v. Mayo*, [1920] 2 K. B. 346. *Mentd.* *Re Boyse*, Crofton v. Crofton (1886), 33 Ch. D. 612; *Re Bethell*, Bethell v. Bethell (1887), 34 Ch. D. 561.

**774. Debt of third person—3 & 4 Anne, c. 8.]—**A promissory note to pay on account of his mother:—*Held*: not within the above Act.—**GARNET v. CLARKE** (1709), 11 Mod. Rep. 226; 88 E. R. 1005, N. P.

**775. ———.]—**A note to pay for the debt of another:—*Held*: within the above Act.—**POPLEWELL v. WILSON** (1720), 1 Stra. 264; 93 E. R. 512.

**Annotations:—***Appld.* Ridout v. Bristow (1830), 1 Cr. & J. 231; *Sowerby v. Butcher* (1834), 4 Tyr. 320. *Consid.* Nelson v. Serle (1839), 4 M. & W. 795. *Reid.* Baker v. Walker (1845), 14 M. & W. 405.

**776. ——— Right of insisting upon bill from third person.]—**The consideration necessary to recover on a bill of exchange, is not such a consideration as would be required to maintain an action on a special contract independently of the bill, but it is sufficient if the bill was given in respect of a right, which the party receiving it had, of insisting upon a bill from a third person.

A broker at Newcastle shipped a cargo of coals, for which he drew a bill of exchange on the consignees, in favour of the vendors. The bill being returned in consequence of the shortness of the date, the vendors, by the direction of the broker, drew another bill at a longer date, which they sent to the broker's counting-house. The broker had left Newcastle in consequence of embarrassments, but deft., who had come there to investigate his affairs, & was in the counting-house, on being informed of the transaction, & asked to sign the second bill, did so generally: *Held*: he was personally liable thereon.

The debt of a third person is a valid consideration; & the consideration need not of necessity be such as would enable pltf. to sue on a special contract (**BAYLEY, B.**).—**SOWERBY v. BUTCHER** (1834), 2 Cr. & M. 308; 4 Tyr. 320; 3 L. J. Ex. 80; 140 E. R. 802.

**Annotations:—***Reid.* Easton v. Pratchett (1835), 1 Gale, 30. *Mentd.* Higgins v. Senior (1841), 11 L. J. Ex. 199.

**777. ——— & costs of action.]—**Declaration on a promissory note, in general terms stating the promise by deft. to pay the money sought to be recovered, is sufficient to sustain the action, though the note when procured shows it was given to pay the debt & costs of an action against a third person.—**COOMBS v. INGRAM** (1824), 4 Dow. & Ry. K. B. 211.

**778. ——— Note as security for indebtedness.]—**Debt by the payee against one of the two makers

of a joint & several promissory note. Plea, that the note was signed by deft. at the request of W., & for the security to pltf. of £15 due from W. to him, & that deft. never had any value or consideration for the note. Replication, that deft. had value & consideration for the note. On demurrer to the replication:—*Held*: good, as the plea disclosed a sufficient consideration for the note so as to enable pltf. to maintain debt.—**SISON v. KIDMAN** (1842), 3 Man. & G. 810; 4 Scott, N. R. 429; 11 L. J. C. P. 100; 6 Jur. 283; 133 E. R. 1365.

**Annotation:—***Distd.* Crofts v. Beale (1851), 11 C. B. 172.

**779. ———.]—**In *assumpsit* by payee against maker, on a promissory note payable on demand, with interest, deft. pleaded, that the note was made by deft. as a collateral security for a debt due from J. to pltf., that deft. was not, at the time of making the note, or ever, liable to pay the debt, or to give the note as a security for same, & that there never was any other consideration for the making of the note, save as aforesaid:—*Held*: a sufficient plea of no consideration, after verdict.—**CROFTS v. BEALE** (1851), 11 C. B. 172; 20 L. J. C. P. 186; 17 L. T. O. S. 144; 15 Jur. 709; 138 E. R. 436.

**Annotations:—***Distd.* Currie v. Misa (1875), L. R. 10 Exch. 153; *Crears v. Hunter* (1887), 19 Q. B. D. 341.

**780. ——— Note by widow—"For value received by my late husband."]**—A widow gave a note "for value received by my late husband":—*Held*: the note was valid on the face of it.—**RIDOUT v. BRISTOW** (1830), 1 Cr. & J. 231; 1 Tyr. 84; 9 L. J. O. S. Ex. 48; 148 E. R. 1404.

**Annotations:—***Foll.* Serle v. Waterworth (1838), 4 M. & W. 9. *Distd.* Nelson v. Serle (1839), 4 M. & W. 795. *Mentd.* Moseley v. Hanford (1830), 5 Man. & Ry. K. B. 607.

**781. ——— For debt due by late husband—Respect for memory of deceased.]**—It is a sufficient consideration for a promissory note that it be given by a widow out of respect to the memory of her late husband, to secure a debt due by him; but where it did not appear on the face of the record that the maker of the note was wife to deceased, the Ct. of Error reversed the judgment *non obstante veredicto*, which had been entered on the record by the ct. below.—**NELSON v. SERLE** (1839), 4 M. & W. 795; 1 Horn. & H. 456; 8 L. J. Ex. 305; 3 Jur. 290; 150 E. R. 1643, Ex. Ch.; *reversg.* S. C. *sub nom.* SERLE v. WATERWORTH (1838), 4 M. & W. 9.

**Annotations:—***Reid.* Balfour v. Sea, Fire, Life Asso. (1857), 27 L. J. C. P. 17; *Ashpitel v. Bryan* (1864), 5 B. & S. 723. *Mentd.* Jones v. Jones (1840), 6 M. & W. 84; *Mather v. Maidstone* (1856), 18 C. B.

**782. ——— Equitable liability.]**A married woman, who had property settled upon her in the usual way to her separate use, in 1837 made a joint promissory note with her husband for £950, & delivered same to his bankers as a security for his overdrawn account, & from time to time the note was renewed until the death of the husband, in 1855, the last renewal bearing

(1877), 2 R. & C.

m. third person—No  
*forbearance.*—A note given by A. to B. for a debt due by C., upon no consideration of forbearance, & upon no privity shown between A. & C., cannot be enforced.—**MCGILLIVRAY v. KEEFER** (1848), 4 U. C. R. CAN.

778 L.

as

for

Act a debt due him by B. In-  
C. married B. After  
the marriage, C.'s assignee pressed for a settlement of the debt, & Mrs. C. gave the assignee a note for the amount, in which deft. joined as surety:—*Held*: deft. was not liable on the note, as there was no consideration for Mrs. C.'s making it.—Mc-

ii. ———.]—Where a promissory note is given under a contract of suretyship the consideration of the note is a valid one under the law merchant, & the document is a valid

**FARRER & HEENEY** (1916), 33 W. L. R. 9 W. W. R. 982.—CAN.

date 1848. At the time of his death the debt due by the husband to the bankers was £2,340 18s. 4d., which was reduced by the realisation of certain other securities they held to £917 11s., for which sum, on Aug. 28, 1856, she, after her coverture had determined, made & delivered her promissory note:—*Held*: there was a good consideration for the last-mentioned note, as the note made in 1848, although made during coverture, was binding on her separate estate in equity, & it was immaterial whether it was barred by Stat. Limitations or not.—*LA TOUCHE v. LA TOUCHE* (1865), 3 H. & C. 576; 34 L. J. Ex. 85; 11 L. T. 773; 11 Jur. N. S. 271; 13 W. R. 563; 159 E. R. 657.

—*Mentd.* *Evans v. Heathcote*, [1918] 1 K. B. 418.

**783. — Debt due by father—Family affection.**—Deft.'s father owed plff. money for goods sold. Deft. made a promissory note in his own name to cover the price of the goods, & gave it to plff., who was cognizant of all the facts & that deft. had received no consideration for the note:—*Held*: the above circumstances could not be given in evidence under a plea of "accommodation bill," & there was an original liability on the part of deft. & for a good consideration, viz., family affection.—*COOK v. LONG* (1812), Car. & M. 510, N. P.

**784. Debt of defendant & third person.**—Deft. & M., partners, having obtained leave to overdraw their bankers, plffs., M. gave them a promissory note for £2,000, as a security for advances, & deft. thereupon gave M. a note for £1,000, payable to order. Plffs. advanced £1,300 to M. & deft., & two years after, being in possession of deft.'s note for £1,000 by transfer from M., sued deft. It did not appear that they had given M. any consideration for it, or that they had notice of the circumstances in which deft. gave it to M.:—*Held*: they were entitled to recover.—*HEYWOOD v. WATSON* (1828), 4 Bing. 406; 1 Moo. & P. 268; 6 L. J. O. S. C. P. 72; 130 E. R. 859.

**785. Debt due to partnership—Bill given to one partner after dissolution.**—If A. & B. being partners, dissolve their partnership, & in the deed of dissolution it be stipulated that A. shall receive all debts due to the firm, & afterwards C., a debtor of the firm, accept a bill of exchange drawn by B., for the amount of the debt due to the firm, such stipulation in the deed of dissolution is no defence to an action by B. against C. on the bill of exchange.—*KING v. SMITH* (1829), 4 C. & P. 108, N. P.

**786. Judgment debt.**—To *assumpsit* by payee against maker of a promissory note deft. pleaded that the note was given for a judgment debt, &

that there never was any other consideration: *Held*: the plea was bad, the debt being a sufficient consideration.—*BAKER v. WALKER* (1845), 14 M. & W. 465; 3 Dow. & L. 46; 14 L. J. Ex. 371; 153 E. R. 558.

—*Consd.* *Palmer v. Bramley*, [1895] 2 Q. B. 05. *Re A Debtor, Ex p. The Debtor*, [1908] 1 K. B. 8. *Re London & Eastern Banking Corp., Ex Exors.* (1859), 29 L. J. Ch. 35.

28 OR 4

**787. Cross acceptances.**—A. draws a bill of exchange on B., payable to the order of A., which B. accepts, & B. draws a bill on A., payable to the order of B., which A. accepts, for their mutual accommodation. Both bills are payable at the same time, have the same dates, & contain the same sums. One is a good consideration for the other, & neither is an indemnity, so that if either party becomes bkpt., the bill accepted by him may be proved under his commission, & to an action brought on it his bkpey. may be pleaded.—*ROLEF v. CARLON* (1795), 2 Hy. Bl. 570; 126 E. R. 708.

*Annotations*:—*Consd.* *Cowley v. Dunlop* (1798), 7 Term Rep. 565. *Apld.* *Buckler v. Buttivant* (1802), 3 East, 72. *Refd.* *Garratt v. Austin* (1811), 4 Taunt. 200; *Re Dyer & Swayne, Ex p. Solarte* (1834), 3 Deac. & Ch. 419; *Burdon v. Benton* (1847), 9 Q. B. 843; *Re London, Bombay, & Claim* (1874), 31 L. T. 234.

**788. — — — Assumpsit against deft. as maker of a promissory note.**—*Held*: the note was not to be considered as made without consideration, as the maker had received a cross acceptance from the payees, & there had been an of securities between the parties.—*KENT* (1808), 1 Camp. 177, N. P.

—*Mentd.* *Coster v. Merest* (1822), 7 Moore, C. P. r. Parry (1830), 1 B. & Ad.

**789. — — — In an action by drawer against acceptor of a bill of exchange, a plea that deft. accepted merely for plff.'s accommodation, & that plff. did not, at any time, give any value or consideration for the acceptance, fails, if it appear that, after the bill was accepted, as alleged, for accommodation, plff. gave a cross acceptance & was obliged to pay the amount, & that the bill accepted by deft. was due & unpaid at the time of action brought.**—*BURDON v. BENTON* (1847), 9 Q. B. 843; 11 Jur. 713; 115 E. R. 1498; *sub nom.* *BURTON v. PENTON*, 16 L. J. Q. B. 353.

**790. — Bank bills given for cash & trade bills.**—A merchant in Bombay bought of a bank bills on their London branch for £25,000, giving for them £5,000 in cash & £20,000 in bills on a firm

**783 l. — Debt Family affection.**—A note was by Q. in payment of his father's debt:—*Held*: the note having been given by Q. for his father's debt, it was not invalid for want of consideration.—*STREET v. QUINTON* (1879), 2 P. & B.

**due by son—Family** 1.)—A debtor died insolvent & his mother gave a note to a creditor for a debt owing:—*Held*: in the of fraud, the note could not

), 16 Gr. 108.—CAN.

Deft. gave plff. a promissory note because she thought a deceased brother (whose property she inherited) would have left plff. the amount of the note if he had made a will; there was ed plff.

debt was no for the note.— v. REARDON 4 All. 261.—CAN.

when note third party, but not yet payable, may form a valid consideration for a note.—*DICKENSON v. CLEW* (1850), 7 U. C. R. 421.—CAN.

#### PART X. SECT. 1, SUB-SECT. 2.

**Exchange of cheques.**—A. ex- with B. for mutual & used B.'s cheques. A cheque of A.'s had been dishonoured, & a clerk in A.'s office in the ordinary of business gave the holder cheque to pay the as. A. stopped pay; the holder could recover B. on his (1869), 20 C.

**Exchange of notes.**—Good 18 v. 404.—CAN.



**Sect. 1.—What constitutes consideration: Sub-sects. 2, 3 & 4**

in London, consisting of himself & another person. The bank bills were all indorsed to the firm in London, and were all accepted. The merchant's bills were sent to the London branch of the bank & were accepted by the London firm. The bank was wound up, & the merchant & his partner each became insolvent, the London firm holding at the time of the winding-up bills to the amount of £19,000, & the bank having parted with the bills for £20,000:—*Held*: in the circumstances the bills were not accommodation bills, & the trustees of the London firm were entitled to prove for the £19,000 in the winding-up.—*Re LONDON, BOMBAY & MEDITERRANEAN BANK, Ex p. CAMA* (1874), 9 Ch. App. 686; 43 L. J. Ch. 683; 31 L. T. 234; 22 W. R. 809, L. J.J.

*Annotation*:—*Mentd. Lovel v. Lovel* (1881), 45 L. T. 252.

**791. Cross cheque.**—*Assumpsit* by the holders against the drawer of a cheque. Plea, that deft. made the draft for the accommodation of C., & that there never was any consideration for it, & further, that there never was any consideration for the transfer of same by C. to plffs., & that they always held same without value. Replication, *de injuria*. At the trial, it appeared that plffs. were trustees of the L. & W. Bank, & that they employed R. as their agent to manage one branch of the concern. C., in whose favour the cheque was drawn, had an account with that branch, which was considerably over-drawn. It was the practice of the bank to send round an inspector to all their branch banks once every quarter to examine their agents' accounts, & in order to prevent its being discovered that C. was in debt to the bank R. was in the habit of taking cheques from C. before the quarter-day approached, which he placed to his credit on the account, but upon an express understanding that they were not to be presented, but returned to C. after the quarter-day was past. The cheque in question had been obtained from deft. for this purpose by C., R. being aware of it, in consideration of a counter cheque from C. for the same amount:—*Held*: neither of the averments in the plea was sustained on the evidence, & plffs. were entitled to recover.—*BOSANQUET v. CORSER* (1841), 8 M. & W. 142; 10 L. T. Ex. 275; 5 Jur. 369; 151 E. R. 983.

**SUB-SECT. 3.—FORBEARANCE AND ABANDONMENT OF LEGAL PROCEEDINGS.**

**792. Liberation from arrest—Second note given by third person & maker—Original note affected**

*t. Ownership of note given in exchange.*—A promissory note given in exchange for another note which has been handed over by the owner for collection, is the property of the person who owned the note for which it was given in exchange.—*v. ROBERT* (1902), Q. R. 21 S. C. CAN.

**PART X. SECT. 1, SUB-SECT. 3.**

by consent out of custody.  
a note for

793 H.

&

an

execution issued on this judgment & a prior execution, the Sheriff levied on the goods of S. & sold them at a great sacrifice. After satisfying the prior execution there remained in the Sheriff's hands a balance of £80, which he did not pay over to W., & who never took any steps to compel him so to do. S. made several payments on the judgment debt, but was at the instance of W. & to a going to jail, gave the note upon:—*Held*: the note was without

(1868), 7 N. S. R.

with usury.]—If the payee of a note, given for an usurious consideration, arrests the maker, & to procure his liberation, a third person joins the maker of the note in another note for the amount of the debt, the usury which affected the first note cannot be set up as a defence to the second.—*TURNER v. HULME* (1801), 4 Esp. 11, N. P.

**793. — Civil execution.**—D., being appointed receiver in a suit in Ch., was in custody of the officer under a warrant of the Lord Chancellor for commitment, & deft., in order to procure his discharge, joined with him as surety in two promissory notes to plff., who was a party to the suit in Ch., & his solr., who sued out the warrant, for the amount of the debt & costs, & was thereupon discharged by the direction of the solr.:—*Held*: the discharge was a legal consideration for the notes, & an action might be maintained on them, & although there were other parties to the suit in Ch., who did not concur in the discharge, & D. remained liable to be taken again, yet the consideration had not failed, & it was no objection to the validity of the notes, that the sum given to cover costs exceeded the costs due, no fraud being intended.—*BRETT v. CLOSE* (1812), 16 East, 293; 104 E. R. 1100.

**794. Discharge from insolvency.**—Where insolvent debtor was remanded for 6 months at the suit of G., & during his imprisonment, A., the attorney of G., agreed with him that he should be discharged on giving A. a bill of exchange for part of G.'s debt, which he gave, & was liberated:—*Held*: insolvent could not be sued on the bill of exchange.—*ASHLEY v. KILICK* (1839), 5 M. & W. 509; 9 L. J. Ex. 34; 4 Jur. 222; 151 E. R. 215.

*Annotations*:—*Distd. Sherman v. Thompson* (1840), 9 L. J. Q. B. 205. *Mentd. Ex p. Hart* (1845), 14 L. J. Q. B. 92; *Humphreys v. Smith* (1853), Bail Ct. Cas. 151.

*e. further, BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 589–592.*

**795. Forbearance to sue—Surety.**—Deft. & a surety had signed a promissory note before deft. was discharged under Insolvent Debtors Act, 1826 (c. 57), after which, to prevent an action against the surety, deft. joined him in a new note to plff. for the amount of the old one with interest:—*Held*: that note could not be recovered on against insolvent, for it was a new contract or security for payment of same debt, as to which he was entitled to be discharged, & the additional consideration of forbearance to the surety did not affect the case.—*EVANS v. WILLIAMS* (1832),

sory note for the balance of the judgment he was discharged from imprisonment:—*Held*: there was good consideration for the note.—*SMITH v. FRAME* (1906), 2 E. L. R. 63, 203; 41 N. S. R. 20.—CAN.

*a. — Default in payment of fine on conviction.*—Release from imprisonment in default of payment of a fine imposed on conviction for an offence, may be a good consideration for a promissory note to secure payment of the fine & costs.—*PROCTOR v. PARKER* (1899), 12 Man. L. R.

iii.  
against B. & an order  
for payment by instalments. On  
failure to keep up the instalments R.  
was committed. On giving a

of civil  
to  
by deft. in consideration of  
of certain civil  
plff.'s a



1 Cr. & M. 30; 3 Tyr. 226; 2 L. J. Ex. 41; 149 E. R. 301.

-*Feld. Ashley v. Killick* (1839), 5 M. & W.

*Distd. Sheerman v. Thompson* (1840), 11 Ad. & El. 1027. *Apld. Collins v. Benton* (1841), 3 Man. & G. 861. *Consd. Peakman v. Harrison* (1872), L. R. 14 Eq. 484. *Reid. Smith v. Alexander* (1836), 2 Har. & W. 82; *Kidson v. Turner* (1858), 3 H. & N.

**796. — Principal—At request of surety.]—**

For the purpose of inducing pltf. to give time to deft.'s father for payment of a debt, deft. signed a promissory note, whereby deft.'s father & deft. jointly & severally promised to pay to pltf. the amount of the debt with interest half yearly at the rate of 5 per cent. *per annum* until the amount was paid. Pltf. having forbore to sue for several years:—*Held*: pltf. having forbore from suing deft.'s father at deft.'s request, there was a good consideration for deft.'s liability on the note, although there was no contract by pltf. to forbear from suing.—*CREARS v. HUNTER* (1887), 19 Q. B. D. 341; 57 L. T. 554; 3 T. L. R. 756; 35 W. R. 821; *sub nom. CREARS v. BURNYEAT*, 56 L. J. Q. B. 518, C. A.

*Annotation*:—*Reid. Bulteel & Colmore v. Parker & Bulteel* (1916), 32 T. L. R. 601.

**797. — Compromise of claim.]—**

Pltfs., trustees under a local Act, called on deft., who was agent of the owner of certain houses, to pay certain expenses chargeable under the Act on the owner. Deft. told pltfs. that he was not owner, but that B. was, & that B., & not he, deft., was liable. Pltfs., *bona fide* believing deft. to be personally liable, threatened to take proceedings against him to enforce payment, on which deft., notwithstanding he knew that he was not really liable, pltfs. consenting to take a less amount than their claim by instalments, gave them promissory notes to meet the instalments. Pltfs. having sued deft. on the notes:—*Held*: there was good consideration for them, & pltfs. were entitled to recover.—

bill proceedings pending at time of the acceptance against S. & forbearing to proceed with criminal proceedings which pltf. had threatened to institute:—*Held*: the abandonment of the civil proceedings formed a valid & sufficient consideration for acceptance of the bill.—*BEURKE v. MEALY* (1879), 14 Cox, C. C. 329; 41 L. T. 168.—IR.

*Abandonment of* .....  
*against after-acquired property.]—*A bill was passed to secure to pltf. a debt due by T. who was afterwards duly discharged of said debt as an insolvent. Pltf., at the time of drawing, etc., said bill, had notice of the insolvency & the discharge. In an action by the indorsee against the acceptor:—*Held*: the suspension of pltf.'s remedy to proceed against the after-acquired property of his debtor in the insolvent Ct., was a good consideration for the indorsee of the bill.—*BERNAL v. CROKER* (1890), 15 L. C. L. R. 194; 16 Ir. Jur.

**797 i. — Compromise of**

*Pltf. was about to arrest deft. under capias when he made a draft payable to pltf. in settlement of the claim:—Held*: the compromise of the dispute, or the forbearance to sue in consequence of the draft, was good consideration for the draft.—*BURN v. McLEOD* (1890), 22 N. S. R. 533.—CAN.

**797 ii. —** .....]—Pltf., on behalf of A., who had been assaulted & beaten by deft., accepted from deft. a promissory note in settlement of the

claim for damages sustained by A.:—*Held*: pltf., being the agent of A., & having authority in the matter, & being recognised by deft. when he gave the note, there was consideration therefor.—*HURLEY v. MORASH* (1871), 27 N. S. R. 281.—CAN.

**797 iii.**

to the order of B. were pledged to a bank as collateral security for his current account, with power to the bank to collect & apply the proceeds upon the account. The maker of the notes refused to pay them on the grounds that the money had already been paid to B. Upon suit being brought by the bank, the maker gave a new note in settlement of his liability on the notes for 50 per cent. of their value, & thereafter refused to pay & was sued by the bank upon the new note:—*Held*: the bank was entitled to recover on the note.—*BANK OF MONTREAL v. WEISBERG*, [1917] 3 W. W. R. 615; 24 B. C. R. 73, 81; 34 D. L. R. 26.—CAN.

**797 iv. —** .....]—Proof of notes being given as a compromise of actions against the maker is sufficient of consideration given by the payee.—*HOWARD v. SHAW* (1881), 1 L. J. Q. B. 321.—IR.

*have* .....  
*trial.]—*Deft. failed to carry out agreement to support his father the remainder of his life, & pltf. with other members of the family in the lifetime of the father were about to take proceedings with a view to

*COOK v. WRIGHT* (1861), 1 B. & S. 559; 80 L. J. Q. B. 321; 4 L. T. 704; 7 Jur. N. S. 1121; 121 E. R. 822.

*Apld. Callaher v. Bischoffsholm* (1870), L. R. 5 Q. B. 449. *Consd. Miles v. New Zealand Alford Estate Co.* (1886), 32 Ch. D. 266. *Reid. Haywood v. Mower* (1862), 7 L. T. 562; *Re Blythe, Ex p. Banner* (1881), 17 Ch. D. 480; *Jayawickreme v. Amarasuriya*, [1918] A. C. 869.

**798. — Executed consideration.]—A**

was made in the following form: "On promise to pay W. £50, in consideration of foregoing & forbearing an action in the Queen's Bench for damages ascertained by consent to amount to that sum by reason of the injury sustained by his wife, in respect of my liability for non-repair of a footway":—*Held*: the instrument appeared to be made on an executed consideration, & was a valid promissory note.—*SHENTON v. JAMES* (1843), 5 Q. B. 199; 1 Car. & Kir. 136; 1 Dav. & Mer. 331; 13 L. J. Q. B. 90; 7 Jur. 1130; 114 E. R. 1224.

*Annotation*:—*Consd. Tanner v. Moore* (1846), 9 Q. B. 1.

*Stifling prosecution.]—See Sect. 6,*

**SUB-SECT. 4. —GIVING TIME.**

**799. Forbearance of debt.]—**Forbearance of a due from a third person is a sufficient consideration for the giving of a bill or note.

To an action by indorsees against the drawers of a bill of exchange, the et. refused to allow defts. to plead, by way of equitable defence, that a debt was due to the pltfs. from a public co. which had to assign its business & obligations to i., that the bill was afterwards given by defts. in consideration of that debt, & upon the supposition that the assignment was legal & valid, whereas

the agreement aside, when deft., in consideration of the proceedings being abandoned, agreed to give pltf. his promissory note:—*Held*: the claim made by pltf. being a serious one, there was good consideration to support an action on the note, irrespective of whether pltf. could have succeeded in the proposed proceedings or not.—*POWELL v. ...*, 6 E. L. R. 498.—CAN.

**799 i. — Executed**

notes, payable to signed by defts. F. & of a co. not  
Shortly before the notes were F. intimated to pltfs. that he & I. about to form the F. Co., & that pltfs. should accept the of that co. to meet a debt by them. Pltfs. agreed to that course; & received the notes:—*Held*: the evidence showed a request for forbearance, in consideration of the new obligations, & forbearance in fact was granted, which was sufficient consideration.—*CRANE v. LAVOIE* (1912), 21 W. L. R. 313; 2 W. W. R. 429; 4 D. L. R. 175; 22 Man. L. R. 330.—CAN.

**PART X. SECT. 1, SUB-SECT. 4.**

**g. Debt due by third party**

*therefor.]—*Deft. gave his note, to be at a future day, to pltf., for a debt due from A. to pltf., A. agreeing, in consideration thereof, to convey land to deft. A. afterwards refused to convey the land:—*Held*: giving time for the payment of A.'s

## 120 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—What constitutes consideration: Sub-*

it proved to be illegal & void, the proposed plea affording no defence to the action, either legal or equitable.—**BALFOUR v. SEA FIRE LIFE ASSURANCE Co.** (1857), 8 C. B. N. S. 300; 27 L. J. C. P. 17; 30 L. T. O. S. 122; 3 Jur. N. S. 1304; 6 W. R. 19; 140 E. R. 756.

*Annotation:—Mentd.* Pope & Pearson v. Buenos Ayres New Gas Co. (1892), 8 T. L. R. 758.

**800. Gaming debt.**—A motion for a new trial of an action on a bill of exchange for £2,020 was made on an affidavit stating that, according to the deponent's information & belief, the bill was given, except as to £80, for a gaming debt. There was evidence that deft. had by letter asked for time & been indulged for several years:—*Held*: the rule must be refused.—**DAUBU'Z v. MORSHEAD** (1815), 6 Taunt. 332; 128 E. R. 1062.

*Annotations:—Mentd.* Schmitz v. Van de Veer (1915), 84 L. J. K. B. 861; Tingley v. Müller, [1917] 2 Ch. 144; Rodriguez v. Speyer, [1919] A. C. 59.

— **Renewal of acceptances.**—To a declaration by drawer against acceptor of two bills of exchange for £50 each, deft. pleaded that he accepted the bills at the request of a third person to whom he had lost £100 by gaming, & in consideration of the sum so lost, that there was no consideration, & that pltf., when the bills were drawn & accepted, had notice of the gaming consideration. Replication, *de injuria*. It appeared on the trial that deft. at first accepted, in consideration of the gaming transaction, a bill drawn by pltf. for £100, which was dishonoured, & pltf. then gave him time, & took the acceptances declared upon by way of renewal, & that pltf. at that time knew of the gaming transaction:—*Held*: not material that the latter acceptances were given partly on a new consideration, viz., the extension of time for payment.—**HAY v. AYLING** (1851), 16 Q. B. 423; 20 L. J. Q. B. 171; 17 L. T. O. S. 26; 15 Jur. 605; 117 E. R. 941.

*Annotation:—Reid.* Woolf v. Hamilton, [1898] 2 Q. B. 337.

**802. — Forbearance to publish default.**—Deft., a bookmaker, owed pltf., also a bookmaker, £375 for money lost on bets. Deft. admitted that he owed pltf. £355, & asked him to accept a post-dated cheque for that amount in settlement. Pltf. agreed, & deft. sent him his cheque for that

amount post-dated 14 days. The cheque upon presentation was dishonoured. Deft. then asked for further time, which was given, but deft. did not pay, & pltf., about seven weeks after the cheque was dishonoured, brought an action to recover the £355. Deft. was a member of a club frequented by sporting men, at which he might have been posted as a defaulter, if he had failed to pay his betting debts:—*Held*: there was sufficient consideration to support the promise to pay the £355 inasmuch as it was a settlement of a claim for a larger amount, & as time was given to him by pltf. to pay the amount, deft. being desirous of not being posted as a defaulter at his club or at any race meeting.—**GOODSON v. BAKER** (1908), 98 L. T. 415; 24 T. L. R. 338; 52 Sol. Jo. 302.

*Annotations:—Distd.* Browne v. Balley (1908), 24 T. L. R. 644. *Consd.* Hyams v. Stuart King, [1908] 2 K. B. 696. *Apld.* Barkworth v. Gant (1909), 25 T. L. R. 722. *Reid.* Re Comar, *Ex p.* Ronald (1908), 52 Sol. Jo. 642; Wilson v. Conolly (1910), 103 L. T. 461.

**803. — — —**—Pltf. & deft., who were both bookmakers, had betting transactions together, which resulted in deft. giving pltf. a cheque for the amount of bets lost to him. At the request of deft. the cheque was held over by pltf. for a time, & part of the amount of the cheque was paid by deft. Subsequently a fresh verbal agreement was come to between the parties, by which, in consideration of pltf. holding over the cheque for a further time & refraining from declaring deft. a defaulter & thereby injuring him with his customers, deft. promised to pay the balance owing in a few days. The balance was never paid:—*Held*: the forbearance of pltf. to sue, coupled with his forbearance to declare deft. a defaulter, constituted a good consideration for the fresh agreement, & pltf. was entitled to recover.—**HYAMS v. STUART KING**, [1908] 2 K. B. 696; 77 L. J. K. B. 794; 99 L. T. 424; 24 T. L. R. 675; 52 Sol. Jo. 551, C. A.

*Annotations:—Distd.* Re Comar, *Ex p.* Ronald (1908), 52 Sol. Jo. 642. *Foll.* Goodson v. Grierson (1908), 52 Sol. Jo. 599; Cohen v. Ulph (1909), 25 T. L. R. 710; Morisset v. Lang (1910), *Times*, July 11th; Wilson v. Conolly (1910), 103 L. T. 461. *Reid.* Saxby v. Fulton, [1909] 2 K. B. 208; Re Bonacina; Le Brasseur v. Bonacina, [1912] 2 Ch. 394. *Mentd.* Genforsikrings Akt. v. Da Costa (1910), 103 L. T. 767; Re Campbell, *Ex p.* Seal, [1911] 2 K. B. 992; Lloyd v. Grace, Smith, [1911] 2 K. B. 489; A.-G. v. Horner, [1913] 2 Ch. 140; O'Connor & Ould v. Ralston, [1920] 3 K. B. 451.

*See, also*, No. 825, *post*.

, generally, CONTRACT; GAMING &

good consideration for deft.'s promise.—**MOFFATT v. DUPLISSEY** (1850), 1 Han. 21.—**CAN.**

**b. — — —**—The manager of a bank being indebted to it for wrongfully taking their money agreed to turn over to the bank all his assets: the bank asked for further security & deft. made to the bank his promissory note, after which he transferred his assets to it. The bank agreed to give the manager time to realise on the & did not take any civil

against the manager: not sufficient

to.—**UNION BANK v.**

31 W. L. R. 531.—**CAN.**

**k. — — —**—No time.—*Pleading.*—To a declaration upon a promissory note, deft. pleaded that he made the note, which was payable on demand, with & for the accommodation of W., at the request of pltf., in respect of a pre-existing t., then due to pltf. by W., & that any value or consideration for the

or payment" of the note by deft.:—*Held*: the plea was good, for it showed that no extension of time had been given, & no consideration.—**MERCHANTS BANK v. ROBINSON** (1879), 8 P. R. 117.—**CAN.**

**l. Loss sustained by insurer.—***Note given.*—The secretary of a fire insurance co. gave a note payable in 60 days for a loss sustained by an insurer therein:—*Held*: the 60 days given by the note, the policy being at the same time marked "cancelled," was sufficient consideration.—**ARMOUR v. GAYES** (1859), 8 C. P. 548.—**CAN.**

**m. — — —**—*A promise to give of a reasonable time* for payment of a balance of indebtedness on a bill being given, is good consideration for the bill.—**SMITH v. CLINK** (1893), 3 Terr. L. R. 339.—**CAN.**

claim against deft. was placed with pltf. for collection. Pltf., after deft. for a settlement drew

upon him at his request at 30 days for the amount:—*Held*: the giving time was consideration for the acceptance.—**LYONS v. DONKIN** (1892), 23 N. S. R. 258.—**CAN.**

**n. — — —**—*Note taken.*—Deft. gave his promissory note to pltf. for \$100, in part payment of a larger sum which he had agreed to pay for the transfer of the interest of F. in the B. Co., upon which pltf. held an option. Pltf. signed an agreement in which he undertook to transfer the interest bargained for to deft. upon payment of the balance of the purchase-money, taking his note for the amount:—*Held*: there was good consideration for the note.—**SOULIS v. MCNEIL** (1906), 37 N. S. R. 525.—**CAN.**

**p. — — —**—*Payable by instalments.—Right to sue.*—Creditors of deft. entered into a composition agreement with him, whereby they engaged to accept payment of their debts in stated periods, & pltf. agreed to grant three years for the payment of his debt & took a note therefor from



**804. Promise to pay debt not** .....  
**Note given subsequently to postpone payment.]**—O. gave a promise to pay £200, which was supposed to be, though not in fact, enforceable. He subsequently gave a promissory note to postpone payment of such sum:—*Held*: the note was given for good consideration.—**KINGSFORD v. OXENDEN** (1891), 55 J. P. 789; 7 T. L. R. 565, C. A.

**805. Post-dated cheque given in payment of overdue note—Agreement not to claim payment during currency of cheque.]**—In Dec., 1912, pltf. lent to deft. £1,500 on the security of a promissory note payable 3 months after demand. In Mar., 1914, pltf. became uneasy about his money & saw deft., who promised to repay in Apr. In the latter month deft. gave pltf. a post-dated cheque for £1,500, pltf. agreeing that during the currency of the cheque he would not claim payment under the note. When the cheque was presented it was dishonoured. In an action on the cheque:—*Held*: pltf.'s agreement was a consideration for the cheque, & pltf. was entitled to recover.—**ELKINGTON v. COOKE-HILL** (1914), 30 T. L. R. 111.

## SUB-SECT. 5.—OTHER CASES.

**806. Marriage treaty—Note given to enable person to hold himself out as possessed of means—Liability of maker.]**—A note, given fraudulently, to carry on a marriage treaty, shall be good against the drawer, though given without any consideration.—**MONTEFIORE v. MONTEFIORE** (1762), 1 Wm. Bl. 363; cited 1 Bro. C. C. at p. 518; 90 E. R. 203.

—*Consd.* **Bowes v. Foster** (1858), 2 H. & N. 779; **Bentley v. Mackay** (1862), 31 Beav. 143. *Reid.* **Ex p. Carr** (1814), 3 Ves. & B. 108. *Mentd.* **Ex p. Gardner** (1805), 11 Ves. 40; *Re Rooke, Ex p. Oakley* (1811), 1 Rose, 138; **Doe d. Roberts v. Roberts** (1819), 2 B. & Ald. 367; **Stewart v. Wilkinson** (1846), 7 L. T. O. S. 81; **Money v. Jorden** (1852), 15 Beav. 372; **Jorden v. Money** (1854), 5 H. L. Cas. 185; **Bold v. Hutchinson** (1855), 20 Beav. 250; **Hale v. Bates** (1858), E. R. & E. 575; **Shadwell v. Shadwell** (1860), 9 C. B. N. S. 159; **Trall v. Baring** (1864), 3 New Rep. 362; **Mills v. Fox** (1887), 37 Ch. D. 153.

**807. Compounding misdemeanour.]**—A note given for compounding a misdemeanour may be recovered at law.—**DRAGE v. IBBERTSON** (1798), 2 Esp. 643, N. P.

*Annotations*:—*Consd.* **Keir v. Leeman** (1846), 9 Q. B. 371. *Mentd.* **Windhill L. B. of Health v. Vint** (1890), 45 Ch. D.

**808. Gratitude—To infant payee's father—Affection for infant payee.]**—Where a promissory

debt:—*Held*: pltf. could not before the expiration of that period maintain an action on the note.—**WILLARD v. KILMAN** (1846), 1 Kerr. 105.—**CAN.**

a. ———.]—The granting of in enforcing an obligation to is "value" for a promissory note or the same sum; & should the original obligation be found to be invalid, the promissory note will be reduced, on the ground of no value.—**MACDONALD** of

## PART X. SECT. 1, SUB-SECT. 5.

*r. Marriage.*—Marriage is a good consideration for a bill or note.—**M'KEEVER v. M'KAIN** (1846), Bl. D. & Deb. 80.—**IR.**

a. Advances by to A promissory note,

who advances from his father, by he engaged, at his request, to pay his daughter an annuity for specified years, is founded on

1. R. 26 B. C. 77.—**CAN.**

1. Bidding at auction & Bidding for & buying at auction is a consideration for  
 —IR.

of suretyship.]—Cancellation of previous contract of suretyship for a

**ALBERTA ENGINEERING CO., LTD.** (1917), 1 W. W. R. 1177; 11 Alta. L. R. —**CAN.**

due

note, expressed to be for value received, was made in favour of an infant aged nine years, & in an action upon the note by the payee against the exors. of the maker, no evidence of consideration being given, the judge told the jury, that the note being for value received, imported that a good consideration existed, & that gratitude to the infant's father, or affection to the child, would suffice:—*Held*: although the jury might have presumed that a good consideration was given, yet those pointed out were insufficient, & a new trial should be granted. *Semble*: an intention to evade the legacy duty would not have been a good consideration.—**HOLLIDAY v. ATRINSON** 5 B. & C. 501; 8 Dow. & Ry. K. B. 163; 108 E. R. 187.

*Annotations*:—*Consd.* **Easton v. Pratchett** (1835), 1 Cr. M. & R. 798. *Reid.* **Milnes v. Dawson** (1850), 5 Exch. 948. *Mentd.* *Re Leaper*, **Blythe v. Atkinson**, [1916] 1 Ch. 579.

**809. ——— To solicitor for services rendered in bankruptcy proceedings.]**—On plea of no consideration to an action by the drawer against the acceptor of a bill of exchange, the bill bearing date immediately after deft.'s bkpey. & certificate, pltf. produced a letter from deft. himself, expressing deft.'s gratitude to pltf., who was an attorney, for procuring deft.'s certificate & helping him through his bkpey.:—*Semble*: it was sufficient evidence of a consideration to raise a new promise for payment of debts due previous to the bkpey.:—**YOUNG v. FISHER** (1843), 7 Jur. 69.

**810. Direct benefit.]**—It is not sufficient that the acceptor of a bill of exchange receive some benefit indirectly from the contract for which he accepted the bill, but the consideration, however small, should be directly from him for whom the bill was accepted.—**ARCHER v. BAMFORD** (1823), 1 L. J. O. S. K. B. 228.

**811. Gift.]**—W., the uncle of pltf.'s wife, was applied to by a friend of pltf. to advance £1,000 to defray some expenses connected with pltf.'s election as member of Parliament. W. declined to make the advance, but said he would give pltf. £500 & deduct it from the legacy he intended to leave to his wife. Shortly afterwards W. sent pltf. a cheque for £500. Pltf. wrote to thank W., saying that he would gladly repay it at an early opportunity, & hoped shortly to be able to do so. A few weeks afterwards, as pltf. deposed, a conversation took place between him & W., & it was agreed at pltf.'s instance that pltf. should pay banker's interest on the sum during W.'s life,

to a for notes given to the & assignees of the v. **CROOKS** (1831), 1 Dra.

—**CAN.**

c. *Divorce expenses of drawer.]*—The consideration for which a bill was granted was payment of a sum which the acceptor had six years before promised the drawer if the latter would take back, to live with him, his wife, from whom he had been divorced, & in repayment of expenses with the divorce:—*Held*: was no consideration; there no liability on the acceptor for expenses of the divorce, & the consideration of taking the who had been his wife to live with him being extrinsic.—(**GRAHAM v.** of Scss.)

—**SCOT.**



**Sect. 1.—What constitutes consideration: Sub-  
[ 5.]**

& pltf., for the purpose, as he deposed, of effectuating that agreement, signed & gave to W. a promissory note for £500, with interest at 1 per cent., on the understanding that payment of the principal was not to be enforced, but only payment of interest, during W.'s life. After W.'s death his exors. sued pltf. on the note for the £500:—**Held**: if there had been a complete gift of the £500, it could not afterwards have formed a consideration for a promissory note.—**HILL v. WILSON** (1873), 8 Ch. App. 888; 42 L. J. Ch. 817; 29 L. T. 238; 21 W. R. 757, L. J.

**Annotations**:—**Mentd.** *Sugden v. St. Leonards* (1876), 34 L. T. 372; *Re Richardson, Shillito v. Hobson* (1885), 30 Ch. D. 396; *Henry v. Smith* (1895), 39 Sol. Jo. 559.

*See, further, Part XI., Sect. 8, post.*

**812. Equitable liability.**—In a suit instituted by legatees for the administration of testator's estate, a claim was made by one of the exors. for £1,000, on a promissory note given to him by testator. It was proved that testator for many years intended a benefit of the amount for claimant, & had entrusted the money to A., who having become insolvent, claimant urged testator to give some security, & thereupon the note, which expressed to be given for value received, was given, & testator thenceforward to the time of his death paid interest on the amount. The claim was disallowed by the master:—**Held**: from the circumstances, the proper conclusion was, that testator believed he was equitably liable to make good the £1,000 & the note was given for value, & the claim ought to be allowed.—**BURKITT v. RANSOM** (1846), 2 Coll. 395; 15 L. J. Ch. 174; 6 L. T. O. S. 452; 10 Jur. 193; 63 E. R. 786.

**813. Debt of honour.**—A lunatic, while sane, had given a promissory note for £50,000, payable in instalments of £5,000 each, in discharge of what he considered was a moral obligation, & had paid three of such instalments. Upon a claim made against his estate, which was a very large one, after he had been found lunatic, by the holder of the note for £35,000, being the amount of the unpaid instalments thereon, to which claim the next of kin consented:—**Held**: although, as the gift was voluntary, the payee of the note was not entitled to claim as a creditor against the lunatic's estate, the ct., in the exercise of its discretion, would order the payment to be made thereout, by way of bounty & as in discharge of a debt of honour on the part of the lunatic, which, in the circumstances, it ought to recognise.—**Re WHITAKER** (A person of unsound mind) (1889), 42 Ch. D. 119; 58 L. J. Ch. 487; 61 L. T. 102; 37 W. R. 673; 5 T. L. R. 424, C. A.

**814. Contract induced by misrepresentation.**—Deft. bought premises at an auction, & gave pltf., an auctioneer, a draft on his banker, instead of money, in payment of the deposit. Having afterwards refused to pay the draft on account of misdescription of the property by pltf., he pleaded to an action on the draft by B. that there was not,

at any time, any consideration or value for his making the draft, or for paying its amount. Issue having been taken, the jury found pltf. guilty of a wilful misrepresentation in the description of the premises:—**Held**: the draft having been in point of law given without consideration, deft. could have rescinded the contract, & might resist payment of his draft, on the ground that the contract, which was the consideration, having been done away *ab initio*, no consideration remained at all, & after verdict the plea must be taken to have been proved.—**MILLS v. ODDY** (1835), 2 Cr. M. & R. 103; 3 Dowl. 722; 1 Gale, 92; 5 Tyr. 571; 4 L. J. Ex. 168.

**Annotations**:—**Consd.** *Koene v. Beard* (1860), 8 C. B. N. S. 372. **Reid.** *Easton v. Pratchett* (1836), 1 Gale, 250. **Mentd.** *Doe d. Bowdler v. Owen* (1837), 8 C. & P. 110.

**815. — Withdrawal of distress for rent.**—No rent due at time of distress.]—A. having made a distress for rent on premises let to B., C., who had purchased the goods distrained from B., accepted a bill of exchange, payable to the landlord, in consideration of his withdrawing the distress:—**Held**: the landlord, knowing that no rent was due at the time of the distress, & having obtained the acceptance by misrepresenting the fact, could not recover on the bill.—**GREW v. BEVAN** (1822), 3 Stark. 134, N. P.

**816. Fluctuating balance.**—When a banker's acceptances exceed the cash balance in his hands, he holds collateral securities for value, & he may recover against the acceptor of an accommodation bill, deposited with him as a collateral security before it became due, although the party who deposited the bill had it in his hands when it became due, & has received satisfaction from the drawer.—**BOSANQUET v. DUDMAN** (1814), 1 Stark. 1, N. P.

**Annotation**:—**Reid.** *Burdon v. Benton* (1847), 9 Q. B. 843.

*See, also, Nos. 884, 885, 1205, 1206, post.*

*See, further, Part XIV., Sect. 2, sub-sect. 4, post.*

**817. Reduction of debit balance at banker's.]**—A. having been in partnership with B., on the dissolution undertook to collect & pay the partnership debts. A. & B. during the partnership had kept a joint account with a branch bank, but after the dissolution there was only a single account of A. kept there. A. having greatly overdrawn that account, obtained a promissory note for £500 from B., his former partner, which he indorsed to the bank as a security for his debt, just previous to a quarterly inspection of the accounts of the branch, the clerk who managed the branch promising that it should not be presented. He kept it, & it was found among the securities of the branch, in his portfolio, when he was discharged from his situation:—**Held**: the directors of the bank might recover the amount from B.

The £500 note was given for value, because it was given to reduce the balance, which balance was brought about by the payment of the partnership debts. With respect to the bank, there was clearly, from the state of the account, a consideration by them for the note (**GURNEY, B.**).—**BOSANQUET v. FORSTER** (1841), 9 C. & P. 659, N. P.

of land was made by a farmer to son, who gave his promissory note to his father, payable to other brothers jointly, the arrangement being for the purpose of distributing estate of the father without a will:—**Held**: the

on the notes, for want of consideration moving from them to the son, **FORSEYTH**

1 R. & G. 380.—**CAN.**

**a. Insurance**  
a policy of insurance is forwarded by the co. to its agent to be delivered to the insured without any

attached, the co. is liable to the insured on the policy, even though not delivered to the insured; & there is good consideration for a promissory note given for the premium.—**CANADA HAIL INSURANCE CO. v. McISAAC**, [1918] 1 W. W. R. 896; 11 Sask. L. R. 91; 39 D. L. R. 714.—**CAN.**

**818. Unascertained balance.]**—In an action on a bill of exchange, on pleas of fraud & of an accommodation acceptance, it is no defence that the bill was given for a supposed balance of account, as represented by pltf., but which, as alleged by deft., did not exist nor was really due.—*WILKS v. HORNBY* (1862), 10 W. R. 742.

**819. — Agreement not to enforce if no balance found on investigation.]**—To a count against the maker of a promissory note, payable on demand, deft. pleaded, that at the time of the making of the note there were certain accounts between pltf. & deft., that pltf. then alleged a balance was due to him on such accounts, & that deft., at pltf.'s request, & on the faith of his allegation, made & delivered the note on account of the balance alleged to be due to pltf., that the note was made on condition that pltf. should not demand payment thereof unless a balance was really due, & that, in fact, no balance was due as alleged by pltf. on the accounts, nor was deft. indebted to him in respect of the accounts, & so deft. said that, except as aforesaid, there never was any consideration for the note, etc.:—*Held*: the agreement not to enforce the note did not negative the absolute contract stated in the first count, & the plea was good.—*KEARNS v. DURELL* (1848), 6 C. B. 596; 6 Dow. & L. 357; 18 L. J. C. P. 28; 13 Jur. 153; 136 E. R. 1382.

*Annotation*:—*Mentd. Young v. Austen* (1869), L. R. 4 C. P.

**820. Obligation to pay creditors of maker of note—Note made & delivered to payee at request of creditors.]**—*Assumpsit* by payee against maker of a promissory note. Plea, as to part, that the note was delivered to pltf. for the purpose of his paying, on deft.'s account, certain debts of deft. to his creditors, that pltf. took it on the terms & understanding, & for the purpose aforesaid, & then promised deft. to pay the debts in manner aforesaid, & that no consideration was received by deft. or given by pltf. for the note. Replication, that the note was made & delivered to pltf., at the request of the creditors, for the purpose of paying them so soon as deft. paid the note; without this that pltf. promised to pay the debts as alleged in the plea. Issue joined on the special traverse. At the trial, pltf. proved the inducement of his replication, & had a verdict:—*Held*: (1) the issue was a material one; (2) the evidence entitled

ptf. to a verdict on such issue, & there appeared on the record a sufficient consideration to entitle pltf. to judgment.—*COLE v. CRESSWELL* (1840), 11 Ad. & El. 661; 3 Per. & Dav. 404; 9 L. J. Q. B. 117; 113 E. R. 365.

**821. Deposit of will by legatee—Promise to deliver will up on payment of note.]**—A., a legatee under a will of doubtful validity, was requested by her brother to allow him to inspect the will. She refused, but afterwards agreed to deposit the will with a third person, upon his depositing also with the same person a promissory note, signed by himself & payable to her, for £60, the amount of her legacy. At the same time she signed an agreement that upon payment of the £60 to her she would deliver up the will. Shortly afterwards, & before the payment of the £60, at her brother's request, the will was delivered by her to his attorney. Inquiries were then set on foot, which led to the supposition that the will might never have been properly executed, & an arrangement was ultimately entered into by all the members of the family, upon the supposition that the will was an invalid instrument, but the claim of A. upon the promissory note was not included in the arrangement, & the will was not returned to A. In an action by A. against her brother upon the note:—*Held*: there was sufficient consideration for the note by the deposit of the will, & the promise to deliver it up on payment of the note, & the will had, in substance & effect, been delivered to the brother, by having been delivered to his attorney in compliance with his request.—*SMITH v. SMITH* (1863), 13 C. B. N. S. 418; 32 L. J. C. P. 149; 143 E. R. 165.

**822. Future services to be rendered by payee—Binding contract for services essential.]**—To constitute the rendering of future services by the payee a good consideration for the making of a promissory note, there must be some binding contract for such services.—*HULSE v. HULSE* (1856), 17 C. B. 711; 25 L. J. C. P. 177; 26 L. T. O. N. 220; 4 W. R. 239; 139 E. R. 1256.

**823. Security for sum secured by invalid bill of sale.]**—By a bill of sale, drawn in accordance with the form in the schedule of Bills of Sale Act (1878) Amendment Act, 1882 (c. 43), & duly registered, the grantor assigned certain specified chattels to

**818 L. Unascertained balance.]**—A promissory note for £570 was given by deft. in payment for an unascertained balance of account. When the balance of account was ascertained it appeared that the amount due from deft. to pltf. was £395 9s. 9d.:—*Held*: there was good consideration for the note.—*HARLAM v. WILLIAMS* (1893), 14 N. S. W. L. R. 110.—AUS.

**l. Moral**  
moral obligation does not constitute sufficient consideration for a promissory note.—*BAKER v. READ* (1868), 7 N. S. R.

**repay premiums paid by payee to insure payment of debt by maker.]**—B., debtor of A., quitted N.; A. thinking the debt would never be paid, insured its payment & paid a premium therefor. The debt was afterwards paid by B., who subsequently returned to N., & gave A. a promissory note for the sum he had paid on the premium of the insurance:—*Held*: a sufficient consideration for

the note.—*GREEN v. WILLIAMS & Co.* (1817), 1 Nfld. L. R. 8.—NFLD.

**Barred debt—No**  
to —A promissory note will  
If the real consideration is shown to be a barred debt no reference is made in the

*MUNISAWMI MOODELLY* (1909), 1 L. R. 33 Mad. IND.

**k. party.]**—Deft., in payment for a car indorsed to pltf. a promissory note to deft. Pltf. objected that the note not on an ordinary form &

to induced deft. to make a new note to him, & promised to return to deft. the first note but omitted so to do:—*Held*: there was valuable consideration for the second note.—*W. W. R.*

**l. Release of**  
promissory note was made in  
ptf. &, after

deft. at pltf.'s request:—*Held*: if the original makers were by deft.'s execution of the release would not be a condition to support deft.'s promise, inasmuch as there was no evidence of a request that other parties to the note should be released.—*STACK v. DOWD* (1907), 10 O. W. R. 633; 16 O. L. R. 331.—CAN.

**m. Subscription to church fund.]**  
—A note promising to pay a Society £50, with interest, towards providing a fund for support of a bishop:—*Held*: founded upon a sufficient consideration.—*H.*, 16 U. C. R.

**Surrender of interest in**  
—To an action on  
made by deft. payable to an infant, deft. set up that the notes were given for the purchase of pltf.'s interest in homestead lands in the State of M., in which State minors could not own homestead lands. Pltf. surrendered his interest in the land whereby deft. was enabled to



## 124 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 1.—What constitutes consideration: Subsect. 5.*

secure to the grantees the repayment of £80, & interest thereon at 30 per cent., the principal sum to be paid, together with the interest then due, by equal monthly payments of £5 6s. on specified days until the whole sum & interest should be fully paid. The grantor at the same time gave a separate promissory note bearing the same date as the bill of sale, promising to pay the grantees, or order, £95 12s., by equal monthly instalments of £5 6s., payable on the same days as the monthly payments in the bill of sale, until the whole sum of £95 12s. should be fully paid, & the note contained a stipulation that in case of default in payment of any instalment the whole of the same sum should become due & payable:—*Held*: by reason of such stipulation the promissory note was a defeasance of the bill of sale within Bills of Sale Act, 1878 (c. 31), s. 10, because if at any time the whole sum payable on the note were paid, the rights of the grantees under the bill of sale would cease, & the bill of sale was void.—*COUNSELL v. LONDON & WESTMINSTER LOAN & DISCOUNT CO.* (1887), 19 Q. B. D. 512; 56 L. J. Q. B. 622; 4 T. L. R. 2; 36 W. R. 53, C. A.

*Annotations*:—*Consd.* Monetary Advance Co. v. Cater (1888), 20 Q. B. D. 785. *Distd.* Carpenter v. Deen (1889), 23 Q. B. D. 566. *Expld.* Onn v. Fisher (1889), 5 T. L. R. 304. *Mentd.* Edwards v. Marcus, [1894] 1 Q. B. 587; Linfoot v. Pockett (1895), 73 L. T. 197; Ellis v. Wright (1897), 76 L. T. 522; Hall v. Whiteman (1911), 105 L. T.

**824.** —.—.]—Deft. gave plffs. a bill of sale of personal chattels to secure repayment of a sum of money & interest, & at the same time, & as part of the same transaction, gave them his promissory note for payment of the same sum & interest by instalments of the same amounts, & to be paid on the same days, as provided by the bill of sale. The promissory note also stipulated that in the event of any of the instalments falling into arrear the whole amount outstanding should immediately become due & payable. In an action on the promissory note:—*Held*: though the stipulation in the promissory note rendered the bill of sale void, the promissory note was good, & plffs. were entitled to recover.—*MONETARY ADVANCE CO. v. CATER* (1888), 20 Q. B. D. 785; 57 L. J. Q. B. 463; 59 L. T. 311; 4 T. L. R. 464, D. C.

; *further*, **BILLS OF SALE.**

**825. Withdrawal of letter of complaint to club.]**—After an action to recover a gaming debt had been dismissed, the creditor wrote to the committee of debtor's club complaining of his conduct in not paying his debts of honour. Debtor, in consideration of the letter of complaint being withdrawn, gave the creditor bills in satisfaction of the debt. Before the bills were paid debtor became bkpt.:—*Held*: the bills were given for a consideration, & the creditor could prove for

have himself located in his which he otherwise might have in doing, & he got the rights which he would have got if had been of full age:—*Held*: it could not be said that there was no consideration for the notes.—*FLETCHER v. NOBLE* (1885), 8 O. R. 122.—*CAN.*

*of land*—Part of  
A definite oral bargain, good for Stat. Frauds, for the sale by

to deft. of an ascertainable & definite parcel of land is sufficient consideration for a cheque drawn by deft. in favour of plff. for a part of the p money.—*KINZIE v. HARPER* 16 O. L. R. 582; 11 O. W. R. *CAN.*

### PART X. SECT. 2.

*p. Original note barred.]—Held*: the fact that plff.'s remedy was barred by Stat. Limitations is not a

the amount due thereon.—*Re BROWNE, Ex MARTINGELL*, [1904] 2 K. B. 133; 73 L. J. K. 446; 90 L. T. 291; 52 W. R. 384; 20 T. L. R. 289; 48 Sol. Jo. 300; 11 Mans. 148.

*Annotation*:—*Consd.* Hyams v. Stuart King, [1908] 2 K. B. 696.

*See, also*, Nos. 802, 803, *ante*.

## SECT. 2.—INSTRUMENTS, ETC., GIVEN IN SUBSTITUTION OR RENEWAL.

**826. Whether new consideration.]—In** the first count of the declaration was on a promissory note dated Dec. 7, 1845, made by deft. for payment of £500 & interest, on demand, to J., plff.'s testator. The second count was on a similar note for £500, dated Jan. 20, 1846. In 1835 & 1842, J. lent to deft. two sums of £500, upon the security of his promissory notes, payable on demand, with interest. The interest was duly paid, & memoranda thereof indorsed by J. on the backs of the notes. At length, the backs of the notes being covered with such memoranda, it was arranged between J. & deft., that new promissory notes should be substituted, & deft. gave J. the notes on which the action was brought:—*Held*: the renewal of the notes did not render deft. liable as upon a new promise.—*FOSTER v. DAWBER* (1851), 6 Exch. 839; 20 L. J. Ex. 385; 17 L. T. O. S. 310; 6 W. R. 47; 155 E. R. 785.

*Annotations*:—*Mentd.* Peace v. Hains (1853), 11 Hare, 151; Turney v. Dadwell (1854), 3 E. & B. 136; Clay v. Turley (1858), 27 L. J. Ex. 2; Dollen v. Batt (1858), 4 Jur. N. S. 535; Owens v. Pizey (1862), 11 W. R. 21; Cook v. Lister (1863), 32 L. J. C. P. 121; Abrey v. Crux (1869), L. R. 5 C. P. 37; Morgan v. Rowlands (1872), L. R. 7 Q. B. 493; *Re Somerset, Somerset v. Poulott*, [1894] 1 Ch. 231; Edwards v. Walters, [1896] 2 Ch. 157; Morris v. Baron, [1918] A. C. 1.

**827. Original bill void by statute—Gaming—9 Anne, c. 19.]—A** young man gave bills for the amount of a gaming debt, & when they were due he renewed them with the then holder, & for the last bills, when due, he confessed a judgment. The ct. would not set aside the judgment, unless he could affect the holder of the bills with notice, but permitted him to try that fact in an issue.—*GEORGE v. STANLEY* (1812), 4 Taunt. 683; 128 E. R. 499.

*Annotations*:—*Distd.* Amory v. Meryweather (1824), 4 Dow. & Ry. K. B. 86. *Reid.* Davison v. Franklin (1830), L. J. O. S. K. B. 376; *Re Ridsdale, Ex p. Marston*, 3 Mont. & A. 444.

—.]—Bills of exchange made in France, on French stamps, & substituted in France for English bills of exchange, which were originally given for a gambling debt, ordered to be delivered up.—*WYNNE v. CALLANDER* (1826), 1 Russ. 293; 38 E. R. 113.

**829.** —.—.]—Deft. pleaded that a promissory note on which plff. declared was

defence to an action on a renewal note.—*WRIGHT v. WRIGHT* (1876), 6 P. R. 395.—*CAN.*

*other bill.]—Defender* in an action for payment of a bill which he had accepted, deposed that the bill was a renewal of a former bill which he had signed as cautioner for another acceptor. He was not asked whether the other acceptor had got value for the original



by debt. in Dec., 1833, in pursuance of an agreement thereby to secure to A. money lost to him at play in July, 1833:—*Held*: the plea was not supported by evidence, that in July, 1833, debt. gave A. a bill of exchange, payable 6 months after date, for £87 lost at play, which bill A. indorsed to K., & that in Dec., 1833, debt. substituted for the bill of exchange a promissory note for £100, bearing date Sept., 1833, & payable to the order of K. 6 months after date, being the note on which pltf. sued. *Seem*: the infirmity of his bill would also avoid his substituted note, upon a plea properly framed.—*BOULTON v. COGHLAN* (1835), 1 Bing. N. C. 640; 1 Hodg. 145; 1 Scott, 588; 4 L. J. C. P. 172; 131 E. R. 1263.

*Consid.* Hay v. Ayling (1851), 16 Q. B. 423.

**Usury.**—A party cannot recover on a new instrument which operates as a security for any usurious interest, although it is founded upon a new settlement of the account between the borrower & lender, & the original securities have been cancelled.—*PRESTON v. JACKSON* (1817), 2 Stark. 237, N. P.

*L. Flight v. Reed* (1863), 1 H. & C. 703.

**831.** ———.]—A bill of exchange, affected by usury, was in the hands of an innocent holder. The latter, on being informed of the usury, took a fresh bill in lieu of it, drawn by one of the parties to the original usury, & accepted by a third person, for the accommodation of the other party:—*Held*: he could not maintain an action against the acceptor of the substituted bill.—*CHAPMAN v. BLACK* (1819), 2 B. & Ald. 588; 106 E. R. 481.

*Annotations*:—*Distd.* Mallalieu v. Hodgson (1851), 16 Q. B. 689. *Reid.* Southall v. Rigg (1851), 20 L. J. C. P. 145. *Mentd.* A.-G. v. Hollingworth (1857), 2 H. & N. 416.

**832.** ———.]—A bill of exchange drawn for the purpose of discounting & applying the proceeds in payment of a former bill, drawn, accepted, & indorsed by the same parties, is not affected by an usurious dealing which would have avoided the first bill. *Seem*: it would have been otherwise had the second bill been given expressly in substitution of the first.—*MARCHANT v. DODGIN* (1833), 2 Moo. & S. 632.

**833.** ———.]—A loan of money at usurious interest before the repeal of 13 Anne, c. 15:—*Held*: a good consideration for a promise, made after the repeal, to repay the loan at the same interest.—*FLIGHT v. REED* (1863), 1 H. & C. 703; 32 L. J. Ex. 265; 8 L. T. 638; 9 Jur. N. S. 1016; 12 W. R. 53; 158 E. R. 1067.

*Annotations*:—*Reid.* La Touche v. La Touche (1865), 3 H. & C. 576; Rimini v. Van Praagh (1872), 27 L. T. 540; Evans v. Heathcote, (1918) 1 K. B. 418. *Mentd.* Heather v. Webb (1876), 46 L. J. Q. B. 89.

Avoidance of bill by statute generally, *see* Sect. 6, sub-sect. 3, *post*.

**834.** Bill subject to equities attaching to original bill.]—*LEE v. ZAGURY*, No. 1189,

bill:—*Held*: whether the other tor had got value for the original bill or not, that bill had been retired by the proceeds of the bill sued on; that defender had thus got value for the later bill.—*BOYD v. FRANK* (1853), 15 Dunl. (Cl. of Sess.) 342; Sc.

a bill drawn in renewal of a bill given in consideration of a party withdrawing his opposition to insolvent's discharge:—*Held*: A.

*MARRH* (1851), 1 L. C. L. R. sub nom. BLUNDEN v. MARTIN, 1r. Jur. 9.—IR.

1. Original bill

—A note was given in of a note voidable for failure

**835.** Original bill altered—Liability discharged—Note given in ignorance of facts—Means of knowledge available.]—A negotiable security given by a party in satisfaction of a liability from which he was discharged in law, in ignorance of the facts which constituted such discharge, cannot be enforced against him, though he may have had the means of knowing those facts.

A bill of exchange indorsed by A. for the accommodation of the drawer was afterwards altered in a material point, with the consent of the drawer, & when the bill was at maturity, B., the then holder, made a demand upon A., who, ignorant of the alteration, though he had ample means of knowing it, gave B. a promissory note for the amount of the bill & expenses:—*Held*: it was a good defence to the action on the note by B., that at the time A. gave it, he was not, in fact, aware of the alteration in the bill.—*BELL v. GARDINER* (1842), 4 Man. & G. 11; 1 Dowl. N. S. 683; 4 Scott, N. R. 621; 11 L. J. C. P. 195; 134 E. R. 5. *Annotations*:—*Reid.* Cook v. Wright (1861), 1 B. & S. 559. *Men* v. Scott (1849), 7 C. B. 63; Townsend v. (1860), 8 C. B. N. S. 477; Pooley v. Brown (1880), 8 Jur. N. S. 938; Brownlie v. Campbell (1880), 5 App.

**836.** Original bill given for illegal or void consideration.]—Where a promissory note, not void, but voidable, as given for what is *malum prohibitum*, is given up in consideration of another note given at a different day, the illegality of the consideration of the former note cannot be set up in an action on the latter. — *WITHAM v. LEE* 4 Esp. 264, N. P.

**837.** ——— Gaming.]—To a declaration by drawer against acceptor of two bills of exchange for £50 each, debt. pleaded that he accepted the bills at the request of a third person to whom he had lost £100 by gaming, & in consideration of the sum so lost, that there was no other consideration, & that pltf., when the bills were drawn & accepted, had notice of the gaming consideration. Replication, *de injuriâ*. It appeared on the trial that debt. at first accepted, in consideration of the gaming transaction, a bill drawn by pltf. for £100, which was dishonoured, & pltf. then gave him time, & took the acceptances declared upon by way of renewal, & that pltf. at that time knew of the gaming transaction:—*Held*: no material variance, the evidence showing sufficiently that the acceptances declared upon were given for the original gaming consideration.—*HAY v. AYLING* (1851), 16 Q. B. 423; 20 L. J. Q. B. 171; 17 L. T. O. S. 26; 15 Jur. 605; 117 E. R. 941.

*Annotation*:—*Consid.* Woolf v. Hamilton, (1898) 2 Q. B. 337.

Illegal or void consideration generally, *see* Sect. 6, sub-sect. 2, *post*.

**838.** Original bill given without consideration.]—A promissory note was given in substitution of a note which was without consideration:—*Held*: the second note was equally without consideration.—*SOUTHALL v. RIGG*, *FORMAN v. WRIGHT* (1851),

of consideration; the original note had been renewed twice. In an action on the last renewal note:—

(1) no amount of renewals would the defect in the original note; (2) debt. was not estopped from the defence of want of consideration in the original note.—*BULLION MINING CO. v. CARTWRIGHT* (1905), 5 O. W. R. 505; 10 O. L. R. 1.—CAN.

tion to bankrupt's

of  
.]—A. ac

## 126 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Instruments, etc., given in substitution or renewal.*

11 C. B. 481; 20 L. J. C. P. 145; 15 Jur. 708; 138 E. R. 560.

*Annotations:—Folld. Edwards v. Chancellor (1888), 52 J. P. 454. Rejd. Cook v. Wright (1861), 1 B. & S. 559. Mentd. Belshaw v. Bush (1851), 11 C. B. 191; Anderson v. Thornton (1853), 8 Exch. 425; Flockton v. Peake (1864), 3 New Rep. 453.*

**839.** —.]—A promissory note was made by deft. in favour of pltf., & the jury found that there was no consideration for that note. The note had been renewed from time to time during a period of two years, for an increased amount at each renewal, without any further pecuniary or tangible consideration actually passing. An action was brought on the last note so made:—*Held*: such note was void for want of consideration.—*EDWARDS v. CHANCELLOR* (1888), 52 J. P. 454, D. C.

**840.** — *Cancellation.*—In a legatee's suit a claim was made in respect of a promissory note by testator in renewal of a previous note for which there was no consideration, to secure a sum of money to a godchild, testator having paid interest on the note & the exor. having also paid interest on the note:—*Held*: the renewed note constituted a debt against testator's assets in priority to legatees, but not to the prejudice of the creditors.

Assuming that there was no valuable consideration for the original note, & that it was a mere gift, the effect of the cancellation of the original note & the renewal seems, upon the authorities, materially to remove the objection of want of consideration (*STUART, V.C.*).—*DAWSON v. KEARTON* (1856), 3 Sm. & G. 186; 25 L. J. Ch. 166; 26 L. T. O. S. 256; 2 Jur. N. S. 113; 4 W. R. 222; 65 E. R. 617.

*Annotation:—Consd. Re Whitaker (1889), 42 Ch. D. 119.*

Absence or failure of consideration generally, see Sect. 8, *post*.

**841. Original bill not binding.**—A bank advanced money to A., & took a promissory note for such advance, which was signed by A. & his wife, who had no separate property. A. died insolvent. Nine days after his death, one of the partners in the bank went to the house of the widow, taking with him a proper stamp, & asked her if she could pay any money on account, & on her answering that she could not, obtained her signature to a new promissory note, written by him upon the stamp. It being doubtful whether pltf. knew that she was not liable upon the original note, & nothing having been mentioned at the interview concerning her non-liability:—*Held*:

**839 ii.** —.]—In an action on a promissory note, the defence was that the note of which it was a renewal was given for the accommodation of the payee by deft.'s partner, who had no authority to make it: it was not shown that pltf. knew its defective

they took the renewal  
pltf. were entitled to  
N BANK OF LOWER  
CANADA v. BULMER, 10 L. N. 361.—  
CAN.

r. tag time  
an  
10th  
accommodation of  
creditor granted the extrix. time—  
he estate was liable upon the  
note.—*UNION BANK v. ZEN-  
EXECUTRIX* (1884), 3 S. C.  
415.

**844 i. Original note given for con-  
sideration.**—The maker of a renewal  
in suit, who received considera-  
tion for the original note, is liable.—  
*COLLINS v. BARIL* (1893), Q. R. 4 S. C.  
1.—CAN.

Deft. gave a promissory note to  
in renewal of a previous note  
by him on account of an amount  
by deft.'s father to M. of whom  
it was exor.:—*Held*: deft. was  
—*McGREGOR*.  
N. S. R. 314.—CAN.

t. — Connection between original  
note & renewal.—*Evidence.*—Pltf. sued  
on a note signed by deft.  
payee to order of pltf., for value  
No cash consideration was  
paid deft. for the note, which was  
in part renewal of a

the note so obtained was invalid, & the case was  
too plain to render it necessary to send it to be  
tried at law.—*COWARD v. HUGHES* (1855), 1 K. & J.  
443; 69 E. R. 533.

**842. Acceptance to original bill forged—Delay  
of acceptor in giving notice of forgery after inspec-  
tion of bill.**—A. accepted a bill for £1,000 for the  
accommodation of B. A bill for that amount,  
purporting to be drawn by B. & accepted by A.,  
& by B. indorsed to C., & by C. to D., for value,  
was afterwards presented to A. for payment.  
A., having had an opportunity of inspecting the  
bill, gave D. a cheque for £100 & a renewed bill  
at 3 months, similarly drawn & indorsed, for  
£1,000, in exchange for the bill so presented to  
him. A. afterwards discovered that the acceptance  
to the bill so delivered up to him was forged:—  
*Held*: no answer to an action at the suit of C.  
upon the substituted bill.

There is sufficient to show a consideration for  
the acceptance of the bill declared on, viz. a loss  
to pltf. of his remedy on the bill against [B.] &  
[C.] (*JERVIS, C.J.*).—*MATHER v. MAIDSTONE* (LORD)  
(1856), 18 C. B. 273; 25 L. J. C. P. 310; 27  
L. T. O. S. 261; 139 E. R. 1374; *subsequent pro-  
ceedings*, 1 C. B. N. S. 273.

*Annotations:—Rejd. London & River Plate Bank v. Bank  
of Liverpool, [1896] 1 Q. B. 7. Mentd. Hall v. Feather-  
stone (1858), 3 H. & N. 284; Flight v. Reed (1863), 12  
W. R. 63; Imperial Bank of Canada v. Bank of Hamilton,  
[1903] A. C. 41*

**843.** — *Bill given in substitution accepted  
without consideration.*—If A., the indorsee for  
value of a bill of exchange to which B., the in-  
dorser, has forged the acceptance of C., delivers  
it up to B., on his solicitation & receives from him  
in lieu thereof a bill accepted by D. without con-  
sideration, A. may maintain an action on such bill  
against D., unless there was an agreement between  
him & B. to stifle a prosecution for a forgery.—  
*WALLACE v. HARDACRE* (1807), 1 Camp. 45, N. P.

—*Consd. Jones v. Merionethshire Permanent  
Benefit Bldg. Soc., [1892] 1 Ch. 173. Rejd. Williams v.  
Bayley (1866), L. R. 1 H. L. 200. Mentd. Re Mapleback,  
Ex p. Butt (1876), 46 L. J. Bcy. 14.*

**844. Original bill given for consideration—  
Whether accommodation bill.**—Bills of exchange  
given by way of renewal of former bills, based  
upon loans or valuable consideration, though not  
accommodation bills in the ordinary acceptance  
of the term, do not represent regular mercan-  
tile transactions.—*Re LAWRENCE, MORTIMORE &  
SCHRADER* (1861), 4 L. T. 184; *affd., sub nom. Re  
LAURENCE, Ex p. LAURENCE*, 30 L. J. Bcy. 33,  
L. JJ.

note for a similar amount, executed  
by deft. to S. & indorsed by him to  
pltf., in settlement of the over-  
drawn account of S. their genera-  
manager:—*Held*: (1) where the con-  
nection between the first note, for  
which valid consideration was received,  
the notes given in renewal thereof,  
is clearly established, want of con-  
sideration is not a valid defence to an  
action by the payee against the maker  
on a renewal note on which the latter  
acknowledges to have received value;  
(2) such connection may be proved  
by a consecutive & uninterrupted  
series of dates in the payee's books in  
regard to the transaction together  
with the probability that the payee  
would not have surrendered a valid  
note without receiving a valid renewal.  
—*ROSS v. WESTERN LOAN & TRUST  
Co.* (1902), Q. R. 11 K. B. 292.—CAN.



**Discharge of original bill by renewal.]—See**

**Agreements to renew.]—See Nos. 621**  
653, 657.

### SECT. 3.—ACCOMMODATION INSTRUMENTS, ETC.

1882 Act, s.

**845. What are—When presumed—Bill payable at house of drawer.]—A bill drawn payable at the house of the drawer, must be presumed to be an accommodation bill.**

No man can doubt, that when the drawer of the bill made it payable at his own house, he knew that there would be no effects in the hands of the acceptor to pay when due, & that he must provide for it himself (BAYLEY, J.).—SHARP v. BAILEY (1829), 9 B. & C. 44; 4 Man. & Ry. K. B. 4; 109 E. R. 17; *sub nom.* SLARK v. BAILEY, 7 L. J. O. S. K. B. 138.

*Annotations:—*Reid. *Re* Cohen, *Ex p.* Johnson (1834), 3 Deac. & Ch. 433. *Mentd.* Caunt v. Thompson (1849), 7 C. B. 400.

**846. — Question for jury.]—It was agreed between pltf., deft., & H., that deft. should make his note for £20, & that pltf. should draw on his banker for £20, & pay in the note, & pltf. was to have £7 12s. & the two others £6 4s. each. The money was thus procured, & deft., not wanting his £6 4s., let H. have it. It was at first agreed that, when the note became due, they should contribute their respective shares to meet it, but H. told pltf. afterwards, that he would provide £12 8s. towards it:—*Held*: (1) if deft. gave the note for the accommodation of pltf. & H., pltf. would not be entitled to recover on it, but if pltf. was to advance £20, & receive £7 12s. as a gift, pltf. could recover the whole of the £20 on the note; (2) if deft. was to be only security for £12 8s., he would be liable only to that amount, & if each was to repay his own share, pltf. could only recover £6 4s. from deft., & H. saying afterwards that he would pay £12 8s. would make no**

difference, unless pltf. then made a new bargain to release deft. from liability altogether.—HOMAN v. THOMPSON (1834), 6 C. & P. 717, N. P.

—*Mentd.* Mills v. Oddy (1834), 6 C. & P. 728.

**847. — No value between payee & drawer—Value between payee & acceptor.]—Although no consideration passes between the payee & drawer of a bill of exchange, it is not to be considered an accommodation bill as to the latter, if there was a valuable consideration as between the payee & the acceptor.—SCOTT v. LIFFORD (1808), 1 Camp. 246, N. P.; *subsequent proceedings*, 9 East, 347.**

*Annotations:—**Mentd.* Hilton v. Fairclough (1811), 2 Camp. 633; Gladwell v. Turner (1870), 39 L. J. Ex. 31; The Ripon City, [1897] 1.

**848. — Bill accepted in ignorance of state of account between parties—Drawer in fact indebted to acceptor.]—W. drew a bill upon deft., to whom he was in the habit of consigning goods for sale. The bill was accepted, but neither party at the time knew the state of the account between them. It afterwards appeared that the balance of the account was considerably in favour of deft. at the time he accepted the bill:—*Held*: it was not an accommodation bill.—BAGNALL v. ANDREWS (1830), 7 Bing. 217; 4 Moo. & P. 839; 9 L. J. O. S. C. P. 21; 131 E. R. 81.**

**Cross acceptances. Nos. 787**

*ante.*

**Acceptance given to enable drawer to take up other accommodation bills—Between same parties.]—A bill accepted for the purpose of taking up other bills accepted by the same party, for the accommodation of the drawer:—*Held*: properly described as having been accepted for the "accommodation" of the drawer.—THOMAS v. FENTON (1847), 5 Dow. & L. 28; 2 Saund. & C. 68; 16 L. J. Q. B. 302; 11 Jur. 633.**

*Annotation:—**Mentd.* Jones v. Broadhurst (1850), 9 C. B. 173.

**850. — Bill given in renewal of—Bill given for consideration.]—*Re* LAWRENCE, MORTIMORE & Co. 844,**

**u. Whether consideration for collateral note.]—Where a promissory note is by the payee deposited with a bank as collateral security to a note, made by the payee to the bank, which has not matured at the time of deposit, but matures before the due date of the collateral note & is renewed by the bank the renewal is sufficient consideration for the collateral note.—CANADIAN BANK OF COMMERCE v. BARLOW (1913), 31 W. L. R. 664.—CAN.**

**Whether surrender of original bill for renewal.]—A promissory note was made by deft. to W. or order, being a renewal of a note for the same amount payable to H. or order. The first note was indorsed by H. & handed to bankers for collection. W. was the husband of H., who died on the day on which the first note became due; he obtained possession of the first note & he handed it to deft. in exchange for the second note:—*Held*: the surrender of the first note was not a valid consideration for the second note as deft. was not thereby released from liability to H.'s estate.—ROBIN v. VANA, 12 O. W. N. 276.—CAN.**

**a. Unintentional mistake in Equitable plea.]—A promissory ren as a renewal of a bill of**

on which a co. alone was liable, was by mutual mistake of the makers & payees drawn in a form which would make the directors of the co. personally liable. In an action on the note by the payees against the directors personally:—*Held*: a plea alleging such mistake is a good equitable defence.—NATIONAL BANK OF NEW ZEALAND v. BACON (1883), 2 N. Z. L. R. 33.—N.Z.

### PART X. SECT. 3.

**845 presumed—Bill payable at office of drawer.]—The office of the drawer, payable at the office of the drawer, carried with it notice that the acceptance is accommodation.—QUEBEC BANK v. 3 Man. L. R. 17.—CAN.**

**Note taken up at maturity by payee—Laches in demand of payment.]—When a promissory note, payable to order & discounted by a bank, is taken up at its maturity, by the payee, without protest as against the indorser, & without demand of payment for nearly three years, there is a strong presumption that the note was given to accommodate the payee.—ROUSSEAU v. R. 19 K. B. 97.—CAN.**

**Bill accepted by**

**for jury.]—A draft for £45 was accepted by the deft. at 7s. a week:—*Held*: for the jury that the bill was an accommodation bill. HARNATT v. SMITH, Arm. M. O.**

**take up other paper—In interest.]—Deft. made a note to M. to assist him in retiring paper in which deft. was interested. M. discounted his own note with pltf., depositing with it deft.'s note as collateral. Deft.'s note being at the time M.'s note fell due, he part of his own note & gave a for the balance leaving deft.'s note with pltf.:—*Held*: deft.'s note was not an accommodation note.—CANADIAN BANK OF COMMERCE v. W. (1883), 8 A. R. 347.—CAN.**

**Notes made & indorsed partners for partnership p A co. was formed which was to be a limited partnership. After its formation & prior to the note given, B., P., & M. & two other became directors & held such. Money was required by the B., P., M., & the other agreed to raise £5,000 by of their notes, to be kept by renewal; any loss to fall on**



## 128 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 3.—Accommodation instruments, etc. Sect. 4 : [ 1.]*

**Bill given as security for due performance of something.]—**A bill of exchange given as a security for the due performance of something is not an accommodation bill.—*HUNTER v. SPENCE* (1850), 15 L. T. O. S. 305.

**852. ——— Supposed balance of account.]—***v. HORNBY*, No. 818, ante.

**853. ——— When issued—Not until delivery to person able to sue thereon.]—**An accommodation bill is not issued until it is in the hands of some person who is entitled to treat it as a security available in law.—*DOWNES v. RICHARDSON* (1822), 5 B. & Ald. 674 ; 1 Dow. & Ry. K. B. 332 ; 106 E. R. 1337.

*Annotations :—Consd. Engel v. Stourton* (1889), 53 J. P. 535 ; *Schofield v. Lonsborough*, [1894] 2 Q. B. 660. **Mentd.** *Chicago Ry. Terminal Elevator Co. v. I. R. Comrs.* (1898), 75 L. T. 157 ; *Brown v. I. R. Comrs.*, *Gordon v. I. R. Comrs.* (1900), 84 L. T. 71.

**854. ——— ———.]—**An accommodation bill is not issued until it has been delivered to some one who can sue upon it.—*ENGEL v. STOURTON* (1889), 53 J. P. 535 ; 5 T. L. R. 444.

**855. Liability of accommodating party—Bill brokers in London dealing with bills in ordinary course of business—Recovery of money paid to bank under guarantee.]—**It having been proved to be the common & almost invariable practice of bill brokers in the city of London, not to indorse each bill of exchange which they had discounted for a customer when they re-discounted it with their bankers, but to give to the bankers a general guarantee for all bills which they re-discounted with them :—*Held* : when an accommodation bill was drawn & accepted for the purpose of raising money for the drawer & the acceptor, the drawer in discounting the bill with bill brokers in the city of London had an implied authority from the acceptor to deal with them in the ordinary course of their business, & the bill brokers had an implied authority from the acceptor to make themselves liable on the bill under their guarantee to their

each equally, & the £5,000 to be raised equally :—*Held* : the notes were accommodation notes.—*BOWEN v. HOL- LAND* (1877), 14 U. C. R. 316.—**CAN.**

**e. ——— Value between payee & maker.]—**P. & S. made two promissory notes in favour of R. ; S. had conducted negotiations on behalf of a syndicate which was being formed for the purpose of purchasing land from R. Stock certificates & the notes were handed to R. in part payment for the land. The certificates represented the same amount of money as the notes :—*Held* : the notes were not made for the accommodation of R.—*ROYAL BANK v. SMITH* (1914), 26 O. W. R. 557 ; 6 O. W. N. **CAN.**

**f. ——— Drawer having in hands.]—**A bill of exchange is not an accommodation bill, if facts of the drawer in the hands, no matter what the *Ex p. WILLIAMS* 477.—**IR.**

**g. ——— A bill granted by a discharged bkpt. for a debt due before sequestration cannot be suspended by the acceptor as a bill granted without value.]—***CLARK v. CLARK* (1889), 7 Macph. (Ct. of

**h. ——— Note signed after other makers—Delivered after maturity.]—**Pltf. on a promissory note purporting to have been made by deft. & his father & mother. It was signed at pltf.'s request by deft. after it had been made by the other makers & delivered to pltf. as a completed note, & after it had become due :—*Held* : there was no question of forbearance to debtor or other consideration & deft.'s promise was clearly *nudum pactum*.—*RYAN v. McKERRAL* (1888), 15 O. R. 480.—**CAN.**

**856i. Liability of accommodated party —To accommodating party—Obligation to indemnify.]—**Pltf. brought an action to recover from defts., W. & E., money paid to retire an accommodation note made by pltf. in favour of W., & indorsed by W. & E., & negotiated by E. :—*Held* : pltf. could recover.—*O'CONNOR v. WALLACE R. & C.* 92.—**CAN.**

**856 ii. ——— ———.]—**Indorsers, after the note on which they were liable had matured, filed a bill against the maker to enforce payment. The relief prayed (1867), 13 Gr. 575.—**CAN.**

**856 iii.**

bankers, & were, in the event of the bkpcy. of the acceptor, entitled to prove against his estate for what they had paid to the bankers in respect of the bill under their guarantee.—*Re FOX, WALKER & Co., Ex p. BISHOP* (1880), 15 Ch. D. 400 ; 50 L. J. Ch. 18 ; 43 L. T. 165 ; 29 W. R. 144, C. A.

*Annotations :—Mentd. Edmunds v. Wallingford* (1885), 14 Q. B. D. 811 ; *Re Bonacino, Ex p. Discount Banking Co.* (1894), 1 Mans. 59 ; *Hand v. Blow* (1900), 44 Sol. Jo. 551 ; *Omnium Insee. Corpn. v. United London & Scottish Insee.* (1920), 36 T. L. R. 386.

**—— To holder.]—**See Sect. 8, sub-sect. 1, *post*.

**—— Burden of proof of consideration.]—**See Sect. 10, sub-sect. 2, *post*.

**—— Amount recoverable.]—**See Part XIII., Sect. 11, sub-sect. 1, *post*.

**—— Discharge by payment by drawer.]—**See Part XIV., Sect. 2, sub-sect. 1, *F., post*.

**—— When relation of principal & surety may be set up.]—**See Part XIV., Sect. 12, sub-sect. 1, *post*.

**—— In action for contribution by another accom- modating party who has paid.]—**See Part XIV., Sect. 12, sub-sect. 5, *post*.

**856. Liability of accommodated party—To accommodating party—Obligation to indemnify—Indorsement by agent to get bills discounted.]—**A. employed B. to get bills, which he had not indorsed, discounted for him. B. in order to effect the discounting indorsed them :—*Held* : A.'s estate must relieve B.'s from the liability incurred by the indorsements.—*Re NUNN & BARBER, Ex p. ROBINSON* (1817), Buck, 113, L. C.

**857. ——— Indemnity not in writing.]—**Pltf. having promised to indemnify G. against the consequences of a bail bond into which G. had entered at pltf.'s request, & G. being forced to make a payment in consequence, it was agreed between pltf. & deft. that pltf. should obtain the money by discounting a bill drawn by pltf. & accepted by deft. Pltf. sued deft. on the bill, & deft. pleaded that it was accepted for pltf.'s accommodation :—

a bill & requested pltf. to indorse for their accommodation, which pltf. did, defts. having discounted, & failed to meet it, pltf. paid to the dis- counter :—*Held* : defts. were liable to pltf. as for money paid for them.—*BROCKVILLE & OTTAWA RY. Co. v. CANADA CENTRAL RY. Co.* (1877), 41 U. C. R. 431.—**CAN.**

**—— ——— ———.]—**where deceased, on indorsing a pro- missory note for the accommodation of the maker, promised without con- sideration to pay it, & the holder compels payment by the indorser's estate, an action for the recovery of the amount lies by such estate against the maker.—*HAZEN v. WOODFORD* (1906), 2 E. L. R. 25.—**CAN.**

**—— ——— ———.]—**Judgment was recovered against pltf. as maker of a promissory note made by him for deft.'s accommodation, & an order was made, requiring pltf. to make monthly payments in satisfaction of the judgment. Pltf. brought an action claiming as against deft. exoneration in respect of the judgment recovered against him :—*Held* : pltf. was entitled to the exoneration claimed & to a declaration that he was entitled to be indemnified.—*RANBY v. MARCUS* (1916), 52 N. S. R. 8 ; 39 D. L. R. 735.—**CAN.**

**—— ——— ———.]—**Defts. drew

**Held:** a jury might find for debt. on that issue, although pltf. was not liable on his promise to indemnify, it not being in writing.—**CRESSWELL v. WOOD** (1839), 10 Ad. & El. 460; 113 E. R. 175.

**858.** ————.]—A. wanting money, he & debt. applied to pltf. to draw a bill, to be accepted by A. & indorsed by debt., & debt. promised pltf. that he should not be called upon. The jury found that A. & debt. were both principals in the transaction:—**Held:** pltf., having paid the bill, was entitled to recover the amount without proof of a promise in writing under Stat. Frauds, s. 4.

As between the holder of the bill of exchange & the parties whose names were on it, A. as acceptor was primarily liable, & indorser stood in the relation of sureties for him. But as between the parties it may always be proved what is the real nature of the transaction (**MARTIN, B.**).—**BATSON v. KING** (1859), 4 H. & N. 739; 28 L. J. Ex. 327; 157 E. R. 1032.

**Annotations:**—**Reid.** Davys v. Buswell, [1913] 2 K. B. 47. **Mentd.** Cripps v. Hartnoll (1862), 8 Jur. N. S. 1010; Mountstephen v. Lakeman (1871), 25 L. T. 755.

**859.** ———— & to take up bill at maturity.]—A party who requests another to "lend his acceptance," impliedly engages to take up the bill at maturity, & to indemnify the acceptor against the consequences of non-payment.—**REYNOLDS v. DOYLE** (1840), 1 Man. & G. 753; Drinkwater, 1; 2 Scott, N. R. 45; 4 Jur. 992; 133 E. R. 536.

**Annotation:**—**Reid.** Batson v. King (1859), 4 H. & N. 739.

**860.** ———— Bill indorsed by holder with notice.]—Pltf. accepted a bill for £25 drawn for the accommodation of F., who was pressed at the time by debt., a sheriff's officer, for seven guineas, claimed as being due for possession money. F. was to get the bill discounted by debt. or elsewhere, & to give pltf. the surplus above the guineas. He deposited it with debt. as a for that sum, debt. knowing the circumstances, & that pltf. had had no value for his acceptance. Debt. indorsed it over, & kept the proceeds. The holder sued pltf., who thereupon paid him the whole amount of the bill:—**Held:** pltf. had no right of action against debt. as for money paid to his use on a request implied by law, but his remedy was against F., on an implied contract to indemnify pltf. for lending him his, pltf.'s, acceptance.—**ASPREY v. LEVY** (1847), 16 M. & W. 851; 9 L. T. O. S. 105; 153 E. R. 1436.

**861.** ———— Funds provided by drawer before bankruptcy.]—The contract of the drawer of an accommodation bill with the acceptor is to indemnify him against the bill, & if the drawer provides the acceptor with funds to meet the bill this is, in law, a performance of that contract, & confers on the acceptor a right to retain the money, not merely against any revocation by the drawer, but also against his assignees in the event of his becoming bkpt. before the bill is paid.—**YATES v.**

**HOPPE** (1850), 9 C. B. 541; 19 L. J. C. P. 180; 15 L. T. O. S. 25; 14 Jur. 372; 137 E. R. 1003.

**Payment made voluntarily**  
—**With knowledge of no liability to pay.**]—The drawer of an accommodation bill cannot sue the acceptor for money paid to his use to the holder of the bill, unless not only the money paid *pro tanto* discharged the liability of the acceptor, but also the payment was made at his request, either express or implied.

Where pltf. drew & indorsed for the accommodation of debt., the acceptor, a bill of exchange, which, when due, was dishonoured, & pltf., without having received notice of dishonour, & without any request from debt., paid a part of the bill to the holder:—**Held:** he could not recover the amount from debt. in an action for money paid to his use, for there was no implied undertaking to indemnify against a payment which the drawer voluntarily made, with full knowledge that he was not bound to pay. **Qu.:** whether the same rule applied to cases where the legal obligation had been discharged by circumstances unknown to the drawer.—**SLEIGH v. SLEIGH** (1850), 5 Exch. 514; 19 L. J. Ex. 315; 15 L. T. O. S. 475; 155 E. R. 224.

**Annotation:**—**Reid.** *Re Fox, Walker, Ex p. Bishop* (1880), 15 Ch. D. 400.

**863.** ———— Accommodating party paying out of partnership funds—Right of firm to sue.]—Debt. wanted an advance of money from D. & S. They, instead of money, sent him an acceptance of D. alone. Debt. agreed that, if he discounted that acceptance, he would give his own acceptance to D. & S. He did discount D.'s acceptance, but did not give his own. Afterwards D. was sued by a holder on his acceptance, & paid the money out of the funds of D. & S.:—**Held:** the legal liability was in D. alone, & the legal right to sue debt. for money paid was in D., & not in D. & S.—**DRIVER v. BURTON** (1852), 17 Q. B. 989; 21 L. J. Q. B. 157; 16 Jur. 373; 117 E. R. 1500.

— Amount recoverable.]—See Part XIII., Sect. 11, sub-sect. 5, *post*.

— To holder.]—See Sect. 8, sub-sect. 1,

#### SECT. 4.—HOLDER FOR VALUE.

E. 1.—VALUE AT ANY TIME GIVEN FOR

See 1882 Act, s. 27 (2).

**864. Consideration by last indorsee—No consideration by former indorsees.]**—Though former indorsees might not pay a valuable consideration, yet if the last gave money for it, it is a good note as to him.—**HALY v. LANE** (1741), 2 Atk. 181; 1 E. R. 513.

**No consideration between acceptor & drawer—Proof by indorsee.]**—In an action by the indorsee of a bill of exchange against the acceptor,

#### PART X. SECT. 4, SUB-SECT. 1.

**864.1. Consideration by last indorsee**  
—No consideration by former indorsee.]  
—P. gave his accommodation acceptance to M. who afterwards returned it. P. then gave it to M.'s wife who handed it back. P. then gave it again to M. Thereafter M. voluntarily traded his estate & neither

the acceptance nor handed it to his official assignee. The acceptance due & there was no demand of payment. P. died having appointed his extrix. & leaving the bill unpaid in the hands of M. M. obtained certificate under Insolvent Act, indorsed the bill to pltf. as for a debt. In a suit by pltf. against the extrix.:—**Held:** the bill remained

after as well as before it fell due, & well transferred for to —**CLOUGH v. G**  
1 W. W. 225.—**AUS.**

Failure of

of whom signed for accommodation of other, gave S. a promissory note to an agreement for the



**Sect. 4.—Holder for value: Sub-sect. 1.]**

the latter proved that his son had been bound apprentice to the drawer in 1827 by indenture, & that a premium of £30 was agreed to be paid, for which the bill was given. The indenture had a £1 stamp impressed upon it. The apprentice served his master for 5 months, & a difference arising between the master & father, & it having been discovered that the stamp was insufficient, the apprentice left his master's service:—*Qu.*: whether even if the acceptor had proved a total failure of consideration as between him & the drawer, it would have been incumbent on pltf., the indorsee, even after notice, to prove that he gave consideration for it.—**MANN v. LENT** (1830), 10 B. & C. 877; 1 L. & Welsb. 320; 5 Man. & Ry. K. B. 660; 8 L. J. O. S. K. B. 269; 109 E. R. 671.

*Annotations*:—**Ridd**. **Westlake v. Adams** (1858), 5 C. B. N. S. 248. **Mentd.** **Henniker v. Henniker** (1852), 1 E. & B. 64.

**866.** ————.]—In an action on a bill of exchange for £98 5s. 3d. by a second indorsee against the acceptor, the pleadings admitted that the acceptance & first indorsement were without consideration, & the issue was whether pltf. gave value for the indorsement to him. He relied in the first instance on the mere production of the bill, but on deft.'s objecting that he was bound to prove consideration, he gave evidence of a debt to the amount of £57 due to him from the first indorser, & of another debt to the amount of £20 18s., due to him from his immediate indorser, for goods sold:—*Held*: he was entitled to a verdict only for the latter amount. *Qu.*: whether the indorsee of an accommodation bill is bound to prove consideration in the first instance, or whether the indorsement of itself *prima facie* imports consideration, until deft. proves the contrary.—**SIMPSON v. CLARKE** (1835), 2 Cr. M. & R. 342; 1 Gale, 237; 5 Tyr. 593; 4 L. J. Ex. 255; 150 E. R. 148.

— **Expld.** **Isaac v. Farrar** (1836), Tyr. & Gr. 281. I never meant in **Simpson v. Clarke** to say that the mere fact of a bill having been given for accommodation threw the burden of proof upon the holder to show consideration, but in order to cast such an *onus* upon him, the other party must go further & prove fraud (**LORD ABINGER, C.B.**) **v. Barber** (1836), 1 M. & W. 425.

**867. Consideration by payee—To acceptor—No consideration between payee & drawer.]**—Although no consideration passes between the payee & drawer of a bill of exchange, it is not to be considered an accommodation bill as to the latter, if there was a valuable consideration as between the payee & the acceptor.—**SCOTT v. LIFFORD** (1808), 1 Camp. 246, N. P.; *subsequent proceedings*, 347.

—**Mentd.** **Hilton v. Fairclough** (1811), 2 Camp.

of land from S. to one of defts. S. before maturity negotiated the note to pltf. on account of an agreement of sale of land from pltf. to S. Both of sale were subsequently The note had not been *Held*: pltf. had taken the

—**CAN.**

W. W.

agent after bringing the sale & purchase of the vendor his to be made by the purchaser & the vendor for value & the

is not **v. RUSSELL** (1918), 1 W. W. R. 900; 11 Sask. L. R. 111; 40 D. L. R. 61.

1. acceptance for in use

N. with blank by him. N.

one to T., for the of retiring his acceptance to up by T. as as co-acceptor with S. for more than the amount of the to be retired. T. the bill to pltf. in payment & directed to N. the bkpt. & T. retired the bill, and S. for payment:—*Held*: was in form the drawer of the bill, he had truly advanced

633; **Gladwell v. Turner** (1870), 39 L. J. Ex. 31. The Ripon City, [1897] P. 226.

**Cheque to pay debt of third person—Failure of consideration between drawer & third person.]**—Deft. chartered a ship to K. at a certain rate per week, to be paid every four weeks in advance. On the second payment becoming due, K. received from pltf., through whom he had sub-chartered the ship to B., a cheque for half the amount due, payable to the order of deft., upon the terms that K. should inform deft. that the advance was made in consideration that the ship should be allowed to perform the charter. K. paid the cheque to deft., but omitted to inform him of the terms on which it had been given, & he had no notice of them, & the remainder 3f the money being unpaid, deft., who had obtained cash for the cheque, stopped the ship:—*Held*: an action for money had & received to recover the amount of the cheque was not maintainable by pltf. against deft., as there was no privity between them, & the action, if any, ought to have been brought by K.—**WATSON v. RUSSELL** (1864), 5 B. & S. 968; 34 L. J. Q. B. 93; 11 L. T. 641; 13 W. R. 231; 122 E. R. 1090, Ex. Ch.

*Annotations*:—**Consd.** **Talbot v. Von Boris**, [1911] 1 K. B. 854. **Mentd.** **Currie v. Misa** (1875), L. R. 10 Exch. 153.

**869. Consideration by drawer—After acceptance for accommodation.]**—In an action by drawer against acceptor of a bill of exchange, a plea that deft. accepted merely for pltf.'s accommodation, & that pltf. did not, at any time, give any value or consideration for the acceptance, fails, if it appear that, after the bill was accepted, as alleged, for accommodation, pltf. gave a cross acceptance & was obliged to pay the amount, & that the bill accepted by deft. was due & unpaid at the time of action brought.—**BURDON v. BENTON** (1847), 9 Q. B. 843; 11 Jur. 713; 115 E. R. 1498; *nom.* **BURTON v. PENTON**, 16 L. J. Q. B.

, further, Sect. 3, ante.

**870. Consideration by partnership—Maker & payee members.]**—In an action by A., the payee of a promissory note, against B., the maker, it is no defence that the note was given as security for a loan made to B. out of the funds of a co-partnership, of which A. & B. are members, & A. the treasurer & trustee, & that A. sues on behalf of the co-partnership.—**LOMAS v. BRADSHAW** (1850), 9 C. B. 620; 19 L. J. C. P. 273; 15 L. T. O. S. 113; 187 E. R. 1034.

, further, Part XXII., Sect. 5, sub-sect. 2,

for it, & entitled to the privileges of an onerous holder. *Scmble*: If a holder had truly given value for a skeleton bill, it was of no consequence whether he appeared on it in the character of drawer or of indorsee.—**SMITH v. TAYLOR** (1824), 2 Sh. (Ct. of Sess.) 755.—**SCOTT.**

m. Consideration by ————. Deft. made a promissory note in favour of the G. Co. Before maturity the Co. indorsed the note to pltf. "to collect & apply on the claim of creditors of the G. Co." in consideration of which he suspended a petition for winding up the indorser at the instance of the creditors he represented:—*Held*: pltf. was a holder for value.—**BAIRD v. McEWEN** (1908), 12 O. W. R.



**871. Consideration by transferee—No consideration between indorser & transferor.]—**E. drew, & wrote his name on the back of, a bill of exchange, & delivered it to B. to get it discounted. B. deposited it for value with T., upon the terms that, if not redeemed by a certain day, it was to be sold :—*Held* : there was a valid indorsement of the bill from E. to T.—**BARBER v. RICHARDS** (1851), 6 Exch. 63 ; 20 L. J. Ex. 135 ; 16 L. T. O. S. 344 ; 155 E. R. 455 ; *sub nom.* **PALMER v. RICHARDS**, 2 L. M. & P. 1 ; 15 Jur. 41.

**872. Indorsement—Without value.]—**The right of action upon a bill of exchange accepted for value, may be transferred by indorsement, without value, as by way of gift.—**HEYDON v. THOMPSON** (1834), 1 Ad. & El. 210 ; 3 Nev. & M. K. B. 319 ; 110 E. R. 1186.

*lation* :—**Mentd.** **Wheeler v. Senior** (1841), 7 M. & W. 562.

*See, further*, Part XI., Sect. 15.

**873. Absence of consideration—Accommodation bill.]—**To an action upon a bill of exchange by the indorsee against the acceptor, deft., being under terms of pleading issuably, pleaded that the bill was drawn by M. at the request & for the accommodation of deft., & without any consideration or value whatever, & that the bill was indorsed by M. without any consideration or value given by plff. for such indorsement to deft. or M. or to any other person whomsoever :—*Held* : plff. was entitled to sign judgment.

The plea is clearly not issuable. There is not even an allegation in the plea, that none of the previous parties to the bill had given value for the indorsement (**PARKE, B.**).—**HUNTER v. WILSON** (1849), 4 Exch. 489 ; 7 Dow. & L. 221 ; 19 L. J. Ex. 8 ; 14 L. T. O. S. 183 ; 154 E. R. 1306.

*n. Consideration by transferee—No consideration between maker & indorser.]—*Deft. & H. entered into a joint & several promissory note payable to K. or order. Deft. became a party to the note "to accommodate H." The note was indorsed by K. to plff.'s wife on account of money advanced by her to K. prior to her marriage, & some months later, was indorsed to plff. on account of a debt due him by K. :—*Held* : the note was valid in the hands of any legal holder.

N. S. R. 185.—**CAN.**

*o. ——— Note not intended purpose.]—*A note as the renewal of another note, but not so used, having been left in the maker's hands with an indorser's name upon it, was received by plff. from the maker for value before it became due :—*Held* : the indorser was liable.—**LARKIN v. WIARD** (1837), O. S. 661.—**CAN.**

Makers of promissory notes were requested by the payee to pay to plff. the full amount of "all notes & accounts you owe me." The notes were not indorsed to plff. :—*Held* : plff. thereby became the beneficial owner of the money represented by

was entitled to hold them as all the world & was in a position to deliver them to the maker.—**TYNELL v. MURPHY** (1913), 39 O. L. R. 235 ; 18 D. L. R. 327 ; 5 O. W. N. **CAN.**

*d. acceptor.]—*A. & B. were partners, A. residing in E. & B. in N. B. drew bills on partnership account upon A., who accepted them, but refused to pay them. With a knowledge of the circumstances, & at A.'s desire, C. purchased the bills & then brought action in N. against A. & B. :—*Held* : C. was entitled to recover.—**SQUARE v. MORRY & Co.** (1818), 1 Nfld. L. R. 122.—**NFLD.**

*r. ——— Bill not indorsed.]—*In an action for the amount of a bill of exchange by the transferee for value against the acceptor, pleaded that as the bill was an accommodation bill pursuer had no higher right against him than the drawers of the bill who had given no value for it. The bill though held by pursuer for had not been indorsed on proce by the drawers, who had become bkpt. :—*Held* : pursuer given value for the bill could from the acceptor though the bill was not indorsed.—**HOOD v.** (1890), 37 Ho. L. R. 551 ; 17 R. (Cl. of Sess.) 749.—**SCOT.**

—*Without*

without value is entitled to on a bill or note if any inter-party is a holder for value.  
**WOOD v. ROSS** (1859), 8 O. P. **CAN.**

as in the of getting accommodation on his bills on which E. put his name. G. drew a bill on E. which he accepted. The bill was discounted at a bank by

**874. Foreign bill—Credit to remitter.]—**If the remitter of a foreign bill receives credit from the drawer till foreign post day, & the payee gives the remitter full consideration, but the remitter does not pay the drawer, the payee may maintain his action against the drawer, although the drawer has never received any consideration.

A declaration stated that defts. made their bill directed to A. & Co. in France, & payable to plff.'s order, & delivered it to C. & Co., who delivered it to plffs. Plea, that defts. made & delivered the bill to C. & Co. for plff.'s use on the terms of being paid the amount, according to the custom of merchants, on next foreign post day, & that defts. were never paid. Replication, that after the bill was delivered to C. & Co., they appeared, & plffs. believed them to be the lawful holders, & that it was delivered by C. & Co. to plffs. for full value :—*Held* : the plea was bad, & even if it had been sufficient to call on plffs. to show *bona fides*, they sufficiently did so by the replication.—**MUNROE v. BORDIER** (1850), 8 C. B. 862 ; 19 L. J. C. P. 133 ; 15 L. T. O. S. 5 ; 14 Jur. 507 ; 137 E. R. 717.

*Mentd.* **Astley v. Johnson** (1860), 5 H. & N. 137.

**875. ———.]—Assumpsit** by payees of a foreign bill against drawers. Plea, that the bill was sold by defts. to C. on one foreign post day, on the terms of being paid according to usage on next foreign post day, that C. purchased the bill as agent for H., & remitted the bill to plffs. as such agent, & plffs.

it for collection for H., that, before the next foreign post day, C. failed, & did not pay the price, that there was no value as between C. & H., or as between C. & plffs., & that plffs. were holders without value. *De injuria*. C. was a London merchant, & plffs. Paris merchants, both correspondents of H., an American merchant. H. was indebted to both C. & plffs. Plffs. wrote to H. for

S. There was no protest or, for non-payment. No was made for some years by G. & there was no marking that the bill was paid to the bank by G. :—*Held* : G. was not an onerous bond holder.—**MEWEN v. GRAHAM** (1812), 12 Sh. (Cl. of Sess.) 110.—**SCOT.**

The drawer of a bill accepted for his accommodation, transmitted it to a bank for discount. The bank declined so to do but held the bill till it became due, & placed the proceeds to his credit. The bank were not informed that the bill was an accommodation bill, till the day on which it became due. The drawer subsequently remitted two small sums in part payment of the bill. Having failed to retire it, the bank executed a charge against the acceptor :—*Held* : the bank having, on account of the security obtained through the bill, refrained from proceeding for recovery of prior advances to him, were entitled to the privileges of *bona fide* onerous holders.—**STEWART v. WYLLIE** (1849), 11 Dunl. (Cl. of Sess.) 1123.—**SCOT.**

**876. ———.]—**Plffs. supported M. who carried on business at C. M. received from deft. accommodation notes which he handed before maturity to plffs. for value ; they placed the bills in the bank for collection, when they were retired by M. without plffs. with funds obtained from After the bills had matured M. returned them to plffs. :—*Held* : on regaining possession, plffs. reverted to their original rights & could recover on them from deft.—**VAN DEN BYL & Co. v. BAUMAN** (1879), Buch.

a remittance. H. sent to C. a bill on London, for an amount exceeding H.'s debt to C., desiring him to realise it, pay himself his own account, & remit the balance to pltfs. C. realised the draft, credited H. with the proceeds, & bought of defts., in the ordinary course in London, a bill, for the amount of the balance due to H., which bill was to be drawn by defts. payable to pltfs'. order, to be delivered by defts. to C. in London on one foreign post day, & paid for to them by C. on the next. The bill in question was drawn, & delivered to C., & sent by him to pltfs., who, by letter to C., acknowledged the receipt on account of H., & stated that they would advise H. thereof. Before the next foreign post day, after the delivery of the bill to C., C. failed. Defts. never received anything for their bill; they directed the drawee not to honour it, & it was dishonoured. Afterwards H. paid pltfs. in full. The action was in the name of pltfs. for H.'s benefit:—*Held*: (1) pltfs. were holders for value, as they held the bill at the time of its dishonour on account of the debt from H. to them, & the subsequent assignment of the equitable interest to H. did not affect pltfs'. right to sue at law; (2) H. had given full value for the bill to C., & as between H. & defts., C. could not be considered as agent for H. in buying the bill, & the credit given by defts. for the price of the bill was given to C. as buyer, & not as agent for H.—*POINIER v. MORRIS* (1853), 2 E. & B. 89; 22 L. J. Q. B. 313; 17 Jur. 1116; 1 W. R. 349; 1 C. L. R. 429; 118 E. R. 702.

—*Reid*. Currie v. Misa (1875), L. R. 10 Exch. Mentd. Wright v. Chappell (1869), 20 L. T. 369.

#### SUB-SECT. 2.—HOLDER HAVING LIEN ON INSTRUMENT.

See 1882 Act, s. 27 (3.)

**876. Distinction between discount & deposit of bill.**—Distinction between discount & deposit of bills, depending on, not the mere fact of indorsement, but the intention to make an absolute transfer, giving full power to go against all parties on the bills, or merely to enable the person, with whom they are deposited, to receive the amount from the other parties. Indorsement *prima facie* evidence of the former, unless the object of mere deposit is clearly shown.—*Ex p. TWOGOOD* (1812), 19 Ves. 229; 34 E. R. 503, L. C.

*Annotation*:—*Reid*. *Re Frith, Ex p. Schofield* (1879), 48 L. J. Bcy. 192.

**877. Bills not subject of mortgage.**—Bills of exchange are not proper subjects of mortgage & are *prima facie* presumed to be given in part payment as they become due.—*HILLS v. PARKER* (1866), 14 L. T. 107, H. L.

**878. Bills not subject of vendor's lien or implied trust.**—A firm of bill brokers borrowed money from pltf. banks on the security of certain bearer bonds. The loans were called in by pltf. banks, &

in accordance with the practice in such cases, the bill brokers on the morning of the day on which the loans were repayable, gave the banks each a cheque for the amount of the loans respectively, receiving in exchange the bonds which had been deposited as security. The bonds were in the course of the same day transferred by the bill brokers to deft. bank. The cheques which pltf. banks received from the bill brokers having been dishonoured they sued deft. bank for delivery up of the securities or their value, alleging that by the practice or usage of bankers in such cases the securities were impressed with a trust in the banker's favour, & remained constructively in their possession until the cheques were honoured:—*Held*: such custom was inconsistent with the nature of negotiable securities that they should be impressed with an implied trust, & they were not impressed with any such trust.

The very idea of impressing negotiable instruments with a vendor's lien or implied trust is utterly repugnant to their nature (FARWELL, L.J.).—*LLOYDS BANK, LTD. v. SWISS BANKVEREIN, UNION OF LONDON & SMITHS BANK, LTD. v. SWISS BANKVEREIN* (1913), 108 L. T. 143; 29 T. L. R. 219; 57 Sol. Jo. 243; 18 Com. Cas. 79, C. A.

**879. Bill wrongfully pledged—By agent of true owner—Recovery of bill by owner—From pledgee.]**

—If A. deposit bills indorsed in blank with B., his banker, to be received when due, & the latter raise money upon them by pledging them with C., another banker, & afterwards become bkpt., A. cannot maintain trover against C. for the bills.—*COLLINS v. MARTIN* (1797), 1 Bos. & P. 648; 126 E. R. 1113.

*Annotations*:—*Consd.* Treuttel v. Barandon (1817), 8 Taunt. 100. *Apld.* Wookey v. Pole (1820), 4 B. & Ald. 1. *Reid*. *Re Boldero, Ex p. Pease* (1812), 19 Ves. 25; *Re Boldero, Ex p. Wakefield Bank* (1812), 1 Rose, 243; Bank of Bengal v. Fagan (1849), 5 Moo. Ind. App. 27; Bank of Bengal v. Macleod (1849), 5 Moo. Ind. App. 1; Barber v. Richards (1851), 6 Exch. 63; Goodwin v. Roberts (1875), L. R. 10 Exch. 337; Dawson v. Isle (1906), 75 L. J. Ch. 338. *Mentd.* Heath v. Sansom (1831), 2 B. & Ad. 291; Palmer v. Richards (1851), 2 L. M. & P. 1.

**880. Previous debt—Of indorser—Accommodation note—Plaintiff holder for value.]**—Action by indorsee against indorser of a promissory note for £500. Plea, except as to £200, that the note was made & delivered to deft. in order that he might indorse it for the accommodation of the maker, to enable him to retain advances of money thereon, that pltfs. had only advanced to the amount of £200, & that there was no consideration for the residue. Replication, that pltfs. were the holders of the note for good & valuable consideration given to the maker in respect of their being the holders of the note to the full amount thereof:—*Held*: (1) it having been proved that more than £500 being due from the maker to pltfs. at the time the note was paid to them, they entered the note as a bill discounted to his credit, but that £198 only was actually paid to him, that was equivalent to their having advanced the amount mentioned

#### PART X. SECT. 4.

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rowed from P. security for its repayment notes, ... by S. to B. Co. & indorsed by it, to \$400. D. was not

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to contract loans on behalf of B. Co. which did not in any way benefit by the transaction. In an action by P. on the notes against B. Co.:—*Held*: (1) P. could not recover; (2) B. Co. was entitled to a return of the notes.—*BANQUE DU PEUPLE v. BRYANT, POWIS BRYANT, LTD.* (1891), 17 Q. L. R. 1.—*CAN.*

*debt—Of note—Plaintiff holder for value.*—M. made a note Nov. 17, 1868, payable to T. or order, at 3 months, at the Q. Bank, for \$4,000 which was indorsed by T. & pltf.,

24, 1868, a note for \$1,500 made by W. to T., & indorsed by M. for



in the note, & was a giving of a valuable consideration within the meaning of the issue; (2) if the note were given to them as a security for a previous debt, plffs. might be properly stated to be the holders for a valuable consideration.—*PERCIVAL v. FRAMPTON* (1835), 2 Cr. M. & R. 180; 3 Dowl. 748; 5 Tyr. 579; 4 L. J. Ex. 139; 150 E. R. 78.

*Annotations*.—*Reid*. *Mills v. Barber* (1836), 1 M. & W. 425. *Mentd*. *Isaac v. Farrar* (1836), Tyr. & Gr. 281.

**881. Debt of drawer—Rights of transferee—Against acceptor.**—A. accepted a bill of exchange for £500 for the accommodation of B. & Co., which bill, together with other securities, was deposited with C. & Co. as a collateral security for payment of a draft of £4,000, indorsed by L., & also for the purpose of occasionally clearing silk to the amount of £2,000, for the general accommodation of B. & Co. B. & Co. afterwards bkpt., when C. & Co., on the dishonour of the bill for £500, sued A., who thereupon gave a *cognovit*, which, together with the bill for £500, C. & Co. handed over to L., who paid for it its full value:—*Held*: the deposited bills were a primary security to C. & Co. for the payment of the £4,000, but L. could not, in equity, be compelled to deliver up to A. the bill & *cognovit*, L. being liable to pay what might remain due upon those bills.—*JONES v. LANE* (1839), 3 Y. & C. Ex. 281; 8 L. J. Ex. Eq. 41; 3 Jur. 265; 160 E. R. 708.

*Annotation*.—*Reid*. *Deuters v. Townsend* (1864), 5 B. & S. 613.

Delivery up of bills generally, see Part XXII.,

**882.** ————A. owed B. £277, & to secure the amount, deposited with him bills to the amount of £1,518 drawn by A. & accepted by C. A. & C. both became bkpt.:—*Held*: B. might prove the full amount of the bills under the fiat against C., but not to receive dividends beyond £277.—*Re BARKER, Ex p. PHILLIPS* (1840), 1 Mont. D. & De G. 232, Ct. of R.

**883.** ———— **Accommodation bill—Debt less than amount of bill.**—When a bill of exchange, accepted for the accommodation of the drawer, is deposited by him as security for a debt less than the amount of the bill, the holder is entitled to prove in the bkpt. of the acceptor for the full amount of the bill, though he cannot receive dividends in excess of the debt due to him by the drawer.—*Re BUNYARD, Ex p. NEWTON, Ex p. GRIFFIN* (1880), 16 Ch. D. 330; 50 L. J. Ch. 484; 44 L. T. 232; 29 W. R. 407, C. A.

**884. To secure fluctuating bank balance—Accommodation bill—Liability of acceptor.**—A. & Co., bankers in the country, being pressed by B. & Co., bankers in London, to whom they were indebted, to send up any bills that they could procure, transmitted for account an accommodation bill accepted by D. When the bill became due, the balance was in favour of A. & Co., but

the bills were not withdrawn, & afterwards the balance between the houses turned considerably in favour of B. & Co., & was so when A. & Co. became bkpts.:—*Held*: B. & Co. were entitled to recover against the acceptor.—*ATWOOD v. CROWDIE* (1816), 1 Stark. 483.

*Annotations*.—*Reid*. *Sturtevant v. Ford* (1842), 4 Man. & G. 101. *Mentd*. *Burdon v. Benton* (1847), 9 Q. B. 843; *Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq. 344.

**885.** ———— **& loan account—Satisfaction of loan account—Retention of bills for general account.**—The O. Bank kept three accounts at the A. Bank, viz. a loan account, a discount account, & a general account. They from time to time received advances from the A. Bank, which were entered in the loan account, & to meet which they deposited securities with the A. Bank. In the course of the transactions the O. Bank deposited three bills of exchange with the A. Bank, accompanied by a letter stating that they proposed to draw upon them for £10,500, but that as their credit would not afford a margin to that extent, they sent the bills as a collateral security. The O. Bank became insolvent & was wound up:—*Held*: there was nothing in the course of dealing or in the terms of the letter to exclude the general rule that a banker had a lien on the securities deposited by a customer for the customer's general balance, & the balance of the loan account being satisfied, the A. Bank might retain the bills for the balance of the general account.—*Re EUROPEAN BANK, AGRA BANK (CLAIM)* (1872), 8 Ch. App. 41; 27 L. T. 732; 21 W. R. 45, L. JJ.

**886. To secure acceptances—Acceptances paid—Effect of bill not being delivered up.**—Where A. gave an accommodation acceptance to B., which B. gave to C., as a security for some acceptances of his, & the acceptances, when they became due, were paid by B. out of the produce of other acceptances given by C., but A.'s acceptance was not given up, though C. was desired not to present it, & A. informed that it would not be presented:—*Held*: the original transaction was continued, & A., not calling for the delivery of the bill, must be presumed to have allowed it to remain as a security in the hands of C. for such of his acceptances as were subsequent to those for which it was at first given.—*WOODROFFE v. HAYNE* (1824), 1 C. & P. 600, N. P.

**887. To secure bank credit—Joint and several note—Liability of makers—Balance at bank in favour of one maker.**—A. wishing to obtain credit with his bankers, in 1917 prevailed upon three persons to join him in a promissory note, whereby they jointly & severally promised to pay the bankers or order £300. The bankers gave A. credit in his pass-book for £300 on account of the note, & charged him with interest for same yearly. Upon two of the partners retiring from the banking-house a balance was struck between the old & new

T.'s accommodation, was handed to the bank by T. as collateral security for the \$4,000 note, & the bank also on it \$1,000 to T. This note retired by the note sued on, which was for \$1,500, made by W. payable to T., & indorsed by T. & by M. to the bank, & was given for the same purpose as the previous \$1,500 note. The bank received \$1,300 from T. on account of the \$4,000 note, & plff. paid the balance on the underst that the bank would hold the \$1,

for his benefit. In an action on this note by plff. against W. & M.: he was the holder of the note. *v. WALSH* (1879), 29 U. C.

after maturity.]—L. note, indorsed by deft. for tion of L., in purchase of an interest in a partnership with the payee. The payee left the note with plffs. for was expelled from the

but was not protected & no notice of dishonour was given deft. After maturity the payee pledged the note with plffs. as collateral to his indebtedness. Plffs. brought action to recover:—*Held*: plffs. held the note for value so far as payee was indebted to them & could recover to that extent.—*MERCHANTS BANK v. THOMPSON* (1912), 21 O. W. R. 740; 3 O. W. N. 1014; 26 O. L. R. 183.—CAN.



Sect. 4.—Holder for value: Sub-sect. 2. . 5.]

firm, & the promissory note was delivered to the new firm, but not indorsed to them. A. at one time had in the hands of his bankers a balance exceeding the amount of the note. He paid interest to the banking-house annually:—*Held*: (1) the note being payable to the five members of the banking-house or order, & being evidently intended to be a continuing security, the makers were liable upon it, notwithstanding a change in the members of the banking-house; (2) the note was not discharged by reason of A. at one time having in the hands of the banker a balance exceeding in amount the sum secured by the note.—*PEASE v. HIRST* (1829), 10 B. & C. 122; L. & Welsb. 81; 5 Man. & Ry. K. B. 88; 8 L. J. O. S. K. B. 94; 109 E. R. 396.

—*Mentd.* *Dry v. Davy* (1839), 10 Ad. & El. 30; *Henniker v. Wigg* (1843), Dav. & Mer. 160.

**888. Bills credited in bank account before due—Cash balance in favour of customer.]**—A customer was in the habit of indorsing & paying into his bankers' hands bills not due, which, if approved, were immediately entered, as bills, to his credit, to the full amount & he was then at liberty to draw for that amount by cheques on the bank. The customer was charged with interest upon all cash payments to him from the time when made, & upon all payments by bills from the time when they were due & paid, & had credit for interest upon cash paid into the bank from the time of payment, & upon bills paid in from the time when the amount of them was received. The bankers paid away such bills to their customers as they thought fit. The bankers having become bkpts.:—*Held*: the customer might maintain trover against their assignees for bills paid in by him, & remaining in specie in their hands, the cash balance, independently of the bills, being in favour of the customer at the time of the bkptcy.—*THOMPSON v. GILES* (1824), 2 B. & C. 422; 3 Dow. & Ry. K. B. 733; 2 L. J. O. S. K. B. 48; 107 E. R. 441.

*Annotations*:—*Follid.* *Re Dilworth, Ex p. Armitstead* (1828), 3 Gl. & J. 371. *Consol.* *Re Dilworth, Ex p. Thompson* (1828), Mont. & M. 102; *Re Dilworth, Ex p. Benson* (1832), Mont. & B. 120. *Apld.* *Re Wise, Ex p. Atkins* (1842), 3 Mont. D. & De. G. 103. *Follid.* *Re Harrison, Ex p. Barkworth* (1858), 2 De G. & J. 194. *Distd.* *Re Mills, Bawtree, Ex p. Stannard* (1893), 10 Morr. 193; *Re A Debtor, Ex p. The Debtor*, [1908] 1 K. B. 344. *Reid.* *Re Moberly, Ex p. Cunningham* (1833), 3 Deac. & Ch. 58; *Joubert v. Woollett* (1837), 2 My. & Cr. 389; *Re Forster, Ex p. Bond* (1849), 1 Mont. D. & De. G. 10; *Gaden v. Newfoundland Savings Bank*, [1899] A. C. 981. *Mentd.* *Re Trye & Lightfoot, Ex p. Pauli* (1838), 2 Jur. 208; *Harris v. Truman* (1881), 7 Q. B. D. 340.

**889.** —.]—On the failure of bankers, who on business in the country, a claim was by certain customers that they were entitled have paid in full out of money in the hands of the London agents of debtors, three cheques drawn by them upon debtors' bank in favour of third persons, & also £1,043, being the amount of cash London & country cheques paid in to the London of debtors by the customers to the credit of their current account with debtors shortly before the receiving order:—*Held*: the inference of fact drawn by the ct. in *Thompson v. Giles*, No. 888,

ante, in respect of short or undue bills, was largely grounded on the bills not being due & the entry in the cash column of the bankers' book being for a full amount of bill without any deduction for the time which the bill had to run, which negatived the inference that the bankers intended to take the bill, & the same reasoning had no application to the case of an instrument payable on demand.—*Re MILLS, BAWTREE & CO., Ex p. STANNARD* (1893), 10 Morr. 193.

**890. Intention to transfer bill as security—Burden of proof.]**—The burden being cast upon debt., sued as indorser of a bill of exchange, when the indorsement has been *prima facie* proved, of showing that the delivery to pltf. was not with the intention of constituting an indorsement, but simply by way of deposit or security:—*Held*: he did not show this merely by proving that the bill was given by drawer & acceptor to pltf., as security to pltf. for a loan of the amount or discount, half of which loan debt., by arrangement with pltf., was to advance to him, even although pltf. so far admitted the arrangement as to claim only the moiety of the amount of the bill, such an arrangement not being inconsistent with an absolute indorsement, nor necessarily tending to disprove it.—*ATTENBOROUGH v. CLARKE* (1858), 27 L. J. Ex. 138.

*Annotation*:—*Mentd.* *Pratt v. Goswell* (1861), 9 C. B. N. S. 706.

**891. — Not to transfer whole rights in bill—Note delivered without indorsement—Liability of maker.]**—A promissory note was transferred by delivery, but not indorsed, to pltf. by way of pledge to secure repayment of an advance. There was no intention on the part of the transferor to transfer the whole of his rights in the note, nor to indorse:—*Held*: pltf. could not recover payment from the maker of the note, & 1882 Act, s. 31 (4), did not avail.—*GOOD v. WALKER* (1892), 61 L. J. Q. B. 736; 8 T. L. R. 776; 36 Sol. Jo. 713.

**892. Notes security for mortgage debt—Debt alleged to be paid.]**—A bill was filed by the maker of four promissory notes, given as a compromise in an action on a guarantee, to restrain an action on one of such notes. The bill stated that debt. was the mtgee. of certain houses, & that the mtgor., being embarrassed, ejectments were brought by the reversioner, & that pltf. gave a guarantee to prevent a forced sale, & got the action stayed, that debt. brought an action on the guarantee, which was compromised by pltf. giving the four notes, & that having contracted to sell the mortgaged property with debt.'s consent, & that debt. should be paid principal, interest, & costs, debt., pending such contract, & which he had notice would be immediately completed, brought an action on one of the notes, & proceeded with it, notwithstanding that the purchase was completed, & that he received his mtge. money, a part of the transaction being that a solr. of debt. took a transfer of another mtge. to secure any advance to debt. by him. The bill being filed against debt. alone prayed an injunction, delivering

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general letter of hypo-  
ing all B.'s bills, notes,  
C. to a lien upon the  
BANK OF COMMERCIAL  
MURPHY (1915), 30  
8 W.

a.

to A., gave as security for the  
debt a promissory note, & also exe-  
cuted a mtge. to A. as a  
for the note. A.  
indorsed the note to P. for

up of the notes, & payment of the costs :—*Held* : as pltf. might be entitled to some relief at the hearing, inasmuch as the amount of the note had been paid, & deft. must, notwithstanding, succeed in the action, a demurrer for want of equity must be overruled.—*ROBINSON v. BROCKLEBANK* (1864), 10 L. T. 154 ; 12 W. R. 331.

**893. Bills deposited pending discount.**—Bills of exchange indorsed by a customer to his banker in order that they may be discounted, & held by the banker "pending discount," i.e. pending inquiries as to the solvency of the acceptors, the banker meanwhile making some advances to the customer on the credit of the bills, are not securities, which the banker, in proving in the customer's bkpcy. for the amount due to him by the customer, is bound to value. The banker is entitled to prove for the full amount due to him, & also to recover what he can from the other parties to the bills, provided that he does not receive in the whole more than 20s. in the pound.—*Re FIRTH, Ex p. SCHOFIELD* (1879), 12 Ch. D. 337 ; 40 L. T. 823 ; 27 W. R. 925 ; *sub nom. Re FRITH, Ex p. SCHOFIELD*, 48 L. J. Bcy. 122, C. A.

*Annotations* :—*Consd.* Dawson v. Isles, [1906] 1 Ch. 633. *Refd.* *Re Hallett, Ex p. Cooks, Biddulph* (1894), 70 L. T. 101. *Mentd.* *Couldery v. Bartrum* (1881), 19 Ch. D. 394.

**894. Duty of pledgee—To present bill for payment—To give notice of dishonour.**—If a creditor takes a bill of exchange from his debtor as collateral security for payment of his debt, & retains it until it becomes due, his duty is to present the bill for payment, & if the bill be dishonoured, to give notice of dishonour in the same way as if he were absolute owner of the bill. If he omits to do this, & the bill becomes worthless, he cannot afterwards sue his debtor, either on the bill, or on the original consideration.—*PEACOCK v. PURSELL* (1863), 14 C. B. N. S. 728 ; 2 New Rep. 282 ; 32 L. J. C. P. 266 ; 8 L. T. 636 ; 10 Jur. N. S. 178 ; 11 W. R. 884 ; 143 E. R. 630.

value. B. from time to time paid to A. as in part liquidation of his debt. *Held* : until he gave notice of the assignment to B., P. could only hold the note as security for the amount due from time to time from B. to A.—*BRENNAN v. PITT SON & BADGERY LTD.* (1899), 20 N. S. W. Eq. 179.—*AUS.*

#### PART X. SECT. 5.

**895 I. Who is—Indorsee.**—Deft. made a note for the accommodation of W. : there was no stipulation that it was to be made use of in any particular way. The manager of the bank to which it was taken for discount did not know that it was an accommodation note & accepted it as security & it was indorsed to the bank two days after its date :—*Held* : the bank being holders in fact were holders in due course.—*MOLSONS BANK v. STEARNS* (1905), 5 O. W. R. 479 ; 6 O. W. R. 667.—*CAN.*

*II.*—A. gave B. his note. B. indorsed it to C. for col. C. in fraud of B., indorsed it to D. before it was due on account of an indebtedness to him :—*Held* : D. was the holder in due course of the note & could recover thereon against A. & B.—*CAMPBELL, WILSON & STRATHDEAN v. GHEE & SOLEMAN* (1914), 30 W. L. R. 95 ; 1 W. W. R. 703.—*CAN.*

**896 III.**—An indorsement legally made of a promissory note

followed by delivery of it to the indorsee makes him the "holder" of it.—*SARAT CHUNDER DUTT v. KEDAR NATH*, 2 C. W. N. 286.—*IND.*

*— Prior indorsement fictitious.*—Two hundis not payable to bearer were intrusted to a broker by the payees for sale. The broker represented to the payees that H. was willing to purchase them, & the payees indorsed them over to H. The broker then forged two indorsements on the hundis, the first from H. to K. ; the second from K. to B. Both K. & B. were fictitious. The hundis were then sold as by them to M., who realised the amounts thereof from the drawee :—*Held* : M. was not a holder in due course.—*JAI NARAIN v. MAHBUB BUKSH*, 1 L. L. R. 28 All. 428.—*IND.*

*— bill by payee.*—Pltf. drew a bill of exchange upon deft. who accepted it, payable to the order of a bank. The bill was dishonoured & returned to drawer by payee :—*Held* : the drawer had a right to receive the bill from the bank as soon as it was dishonoured, & thereby became the lawful owner & entitled to take action against the acceptors.—*CARRIAGE CO. v. LOCKHART* (1906), 1 E. L. R. 76.—*CAN.*

**897 I.**—*Payee.*—The payee of a note signed in blank may be the party to whom it is negotiated, as well as a holder in due course.

—*Refd.* *Yglesias v. River Plate Bank* (1877), 3 C. P. D. 60 ; *Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639.

**895. Purpose for which note given—Onus of proof.**—A promissory note given by principal & surety for a definite sum, & payable on a fixed day, is presumed to be given in consideration of an advance at the date of the note ; & if the payee asserts, as against the surety, that the object of the note was to secure the payment of the balance of an account current between the principal & the payee, the burden of proof lies on the payee. *Re BOYS, EDEDES v. BOYS, Ex p. HOP PLANTE Co.* (1870), L. R. 10 Eq. 467 ; 39 L. J. Ch. 655.

#### SECT. 5.—HOLDER IN DUE COURSE.

*See* 1882 Act, ss. 29, 90.

**896. Who is—Under 1882 Act, s. 2—Indorsee.**

Prior to July, 1892, certain bills of payable to deft.'s order had been deposited by him with Y. by way of security for a debt, but had not been indorsed. They remained in Y.'s possession, & on Oct. 5 deft. indorsed one of them to him. On July 1, 1892, an order had been made restraining deft. from "negotiating, pledging, or disposing of" the bills :—*Held* : by the indorsement of the bill to Y. on Oct. 5 he became for the first time the "holder" of it within the Act, & the bill was on that date for the first time "negotiated," & the order had been disobeyed.—*DAY v. LONGHURST* (1893), 62 L. J. Ch. 334 ; 68 L. T. 17 ; 41 W. R. 283 ; 3 R. 234 ; 37 Sol. Jo. 175.

*Annotation* :—*Mentd.* *Seaward v. Paterson*, [1897] 1 Ch. 545.

**897. — Under 1882 Act, s. 29—Payee.**—The payee being one of the immediate parties to the instrument, is not a holder in due course within the above sect. The "holder in due course" is a person to whom, after its completion

*LILLY B. FABRAH* (1901), Q. R. 17 K. B.

**897 II.**—A promissory note was made by deft., a shareholder in a co. in favour of pltf. for the purpose of obtaining from pltf. an advance of money for the co. Pltf. received the note through a third party & it as collateral security for advances :—*Held* : (1) it was immaterial whether the money was advanced directly on the note or in consequence of its having been given as collateral security ; (2) pltf. was a holder in due course.—*ONTARIO v. POOLE* (1902), 1 O. W. R. 832

**III.**—A promissory note was made by deft. co. & indorsed by directors of deft. co. in their own although the note was payable to pltf., before delivery to or indorsement by them : pltf. took it in faith & pursuant to a clear & understood arrangement with deft. co., & the indorsers :—holders in due course.

*FURNISHERS* Man. L. R. ; 14 W. L. R.

**897 IV.**—S. made a promissory note in favour of R. or R.'s request procured J. & D. to indorse it before it was handed to him. In an action by R. on the note :—*Held* : R. was not a holder in due course.

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*Sect. 5.—Holder in due*

*Co., Hamill v. Lilley* (1886), 3 T. L. R. 265. *Distd.* *Faulks v. Atkins* (1893), 10 T. L. R. 178. *Fold.* *Fox v. Martin*, [1895] W. N. 36. *Consd.* *Herdman v. Wheeler*, [1902] 1 K. B. 361; *Lloyd's Bank v. Cooke*, [1907] 1 B. 794. *Distd.* *Fry v. Smellie*, [1912] 3 K. B. 282. *Williams v. Colonial Bank, Williams v. London Bank of Australia* (1888), 38 Ch. D. 388; *Watkin v. Lamb* (1901), 86 L. T. 483. *Mentd.* *Easton v. London Joint Stock Bank* (1886), 55 L. T. 678; *Hamill v. Lilley, Lilley v. Hamill & Colorado United Mining Co.* (1886), 2 T. L. R. 596; *Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank* (1890), 39 W. R. 449; *Moore v. North Western Bank* (1891), 64 L. T. 456; *Powell v. London & Provincial Bank*, [1893] 2 Ch. 555; *London & Midland Bank v. Mitchell*, [1899] 2 Ch. 161; *Montagu v. Weston, Cleveland & Portishead Light Lys. Co.* (1903), 19 T. L. R. 272; *Stubbs v. Slater & Bond* (1910), 102 L. T. 444; *Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439.

**908. — Post-dated cheque.**—A post-dated cheque bearing a penny stamp is a valid & negotiable instrument, & is "complete & regular upon the face of it," within 1882 Act, s. 29.—*HITCHCOCK v. EDWARDS* (1889), 60 L. T. 636.

*Annotation:—Appld.* *Royal Bank of Scotland v. Tottenham*, [1894] 2 Q. B. 715.

Post-dated cheques generally, *see* Part IV., Sect. 2, sub-sect. 2, *ante*.

**909. — Bill need not be accepted.**—A bill of exchange may be "complete & regular on the face of it," notwithstanding it has not been accepted, so that the holder who has taken it before acceptance may become a "holder in due course" within 1882 Act, s. 29 (1).—*NATIONAL PARK BANK OF NEW YORK v. BERGGREN & Co.* (1914), 110 L. T. 907; 30 T. L. R. 387; 10 Com. Cas. 234.

"Before it was overdue."—*See* Part XI., Sect. 6, sub-sect. 1, *post*.

**910. Without notice of dishonour—Otherwise affected by defects of title.**—The indorsee or transferee for value of a bill of exchange after dishonour has a right to recover against the acceptor, whether the bill was given for value or not, unless there be an equity attached to the bill itself, amounting to a discharge of it.—*Re OVEREND, GURNEY & Co., Ex p. SWAN* (1868), L. R. 6 Eq. 344; 18 L. T. 230; 16 W. R. 500.

*Annotations:—Appld.* *Re European Bank, Ex p. Oriental Commercial Bank* (1870), 5 Ch. App. 358. *Mentd.* *Oriental Corp'n. v. Overend, Gurney* (1871), 7 Ch. App. n.

—C. owed to pltf., a stock-broker, £115 in respect of dealings in stocks & shares. In order to provide funds to meet the debt deft., at C.'s request, drew a cheque for £115 payable to C. or order, which C. was to pay into his bank to meet his cheque for the same amount which he drew at the same time in favour of pltf. C. indorsed the cheque drawn by deft. & paid it

of fraud.)—Deft.

note for the amount of the par value of a share in a co. on a false & fraudulent representation made by an agent of the co. The note showed on its face that it was given for a share in the co., & it was indorsed to the order of pltf., by an indorsement in name of the co., with the name of

on  
in due course, for value, without notice of the fraud.

ANADA v. (1908), 16 O. L.  
11 O. W. R.

action upon a promissory note the evidence showed that at the maturity of the note the secretary of defts. went to the office of the note & gave them a which was subsequently paid. Prior to this payee had negotiated the note upon to pltf. —*Held:* pltf. were holders in due course; they took the note during its currency as security for an of money made by them to the & the subsequent action of the payee in fraudulently procuring a renewal from the defts. could not affect

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into his bank, & handed his own cheque to pltf. Deft. changed his mind & stopped his cheque & thereupon C. handed it to pltf., who had notice that it had been dishonoured. In an action by pltf. against deft. on the cheque:—*Held:* as pltf. was not a holder in due course, inasmuch as he took the cheque with notice that it had been dishonoured, he took it subject to any defect in title attaching to it at the time of dishonour.—*HORNBY v. McLAREN* (1908), 24 T. L. R. 494, C. A.

Negotiation of overdue instruments generally, *see* Part XI., Sect. 6, sub-sect. 1, *post*.

**912. — What amounts to notice—Prior indorser's name obliterated—Note payable on demand with interest—Indorsed two years & half after date.**—A promissory note, payable on demand, with interest until paid, was given in part-consideration for the share of a ship, purchased by the maker from the payee, without an observance of the ship registry Acts, & was indorsed by the payee first to J., who, on presentment, & refusal of payment, obliterated his name & returned it, & afterwards to P., who indorsed it, upwards of two years & half after its date, with the name obliterated, to pltf., for a full & valuable consideration, without notice. Though the contract of sale was void, yet as the maker had recognised it, & as there was a presumption that he had received the subsequent earnings of the share in question, & of a consideration *pro tanto*:—*Held:* pltf., notwithstanding he had taken the note without inquiry, was entitled to recover its amount in an action against the maker. *Qu.*: whether the circumstances affecting the note placed the innocent indorsee in the same situation with the payee, as against the maker.—*GASCOYNE v. SMITH* (1825), M'Cle. & Yo. 338; 148 E. R. 443.

Notice of dishonour generally, *see* Part XII., Sect. 4, *post*.

**913. "In good faith"—Without notice of fraud.**—To a plea by the acceptor of a bill of exchange, that it was, to the knowledge of the holder, negotiated by fraud, & that no consideration was given for the indorsement to the holder, it is sufficient for the holder to reply generally, that he had no notice of the fraud, & that the bill was indorsed to him for a good consideration.—*BRAMAH v. ROBERTS* (1835), 1 Bing. N. C. 469; 9 Dowl. 392; 1 Hodg. 66; 1 Scott, 350; 4 L. J. C. P. 81; 131 E. R. 1198; *subsequent proceedings*, 1 Bing. N. C. 481.

*Annotations:—Repld.* *Prescott v. Levi* (1835), 1 Scott, 726; *Uther v. Rich* (1839), 10 Ad. & El. 784; *Awde v. Dixon* (1851), 6

**914. Gross negligence.**—In an action by indorsee against drawer of an accommodation bill, which had been fraudulently disposed

Co. (1910), 13 W. L. R. 613.

—CAN.

The payee of a note fraudulently represented to its maker the prospects of a co. whereby the latter was induced to take shares therein for which the note was made. W. discounted the note for the payee who received a portion of the proceeds, part being retained by W. in payment of debts due him. In an action by W. on the —*Held:* on the evidence W. that the proceeds of the note were given to the co.; & having discounted it without inquiry as to the



of by the first indorsee, & afterwards discounted by pltf., it is no defence that pltf. took the bill in circumstances which ought to have excited the suspicion of a prudent man that it had not been fairly obtained; deft. must show that pltf. was guilty of gross negligence.—**CROOK v. JADIS** (1834), 5 B. & Ad. 909; 3 Nev. & M. K. B. 257; 3 L. J. K. B. 87; 110 E. R. 1028.

**Annotations:**—**Apld.** *Backhouse v. Harrison* (1834), 5 B. & Ad. 1098. **Refd.** *Foster v. Pearson*, *Stephens v. Foster* (1835), 1 Cr. M. & R. 849.

**915.** —.].—Action by indorsee against acceptor of a bill of exchange. Plea, that pltf. had become possessed of it about the time when it became due, & that pltf. knew that deft. had given the bill to S., without consideration, & for the purpose of being discounted. A verdict having been given for deft.:—**Held:** in order to deprive a man of his remedy on a bill of exchange, it must appear that he took it fraudulently, & as that had not been done, there must be a new trial.—**STORROR v. HARMAN** (1850), 15 L. T. O. S. 69.

**916.** Without notice of want of title in transferor—**Neglect to inquire.**—One who takes a negotiable security *bond fide*, i.e. giving value for it, & having no notice at the time that the party from whom he takes it has no title, is entitled to recover upon it, even although he may at the time have had the means of knowledge of that fact, of which means he neglected to avail himself.

A money-changer at Paris, 12 months after he had received notice of the robbery of bank notes at Liverpool, took one of the stolen notes at Paris, giving cash for it, less the current rate of exchange, from a stranger, whom he merely required to produce his passport & write his name on the back of the note:—**Held:** the circumstance of his forgetting or omitting to look for the notice

right of the payee to receive these proceeds, he was not in good faith & could not recover.—**LOCKHART v. WILSON** (1907), 39 S. C. R. 541.—**CAN.**

**ii.** —.].—In an action by the holder of a note against the maker & indorser, the defence was fraud in procuring the note & knowledge by pltf. of circumstances putting him on inquiry. The jury found there was no fraud in procuring the note & that pltf. was a *bond fide* holder without notice:—**Held:** on the facts there was nothing to arouse suspicion in the mind of an ordinarily prudent man so as to put him on inquiry, & the findings of the jury would not be disturbed.—**GILLARD v. MCKINNON** (1906), 8 O. W. R. 311.—**CAN.**

**914 iii.** —.].—A promissory note of deft. payable to K. or order, was indorsed in the name of K. by T., purporting to sign as agent for K. "per p.p." The signature, in the form in which it was, was procured by the fraud of T. Pltf. bought the note from T. before maturity & did not wilfully abstain from inquiring into the origin of the note:—**Held:** pltf. would not be affected by the fraud; & upon the evidence, he did not wilfully abstain from making inquiry as to the origin of the note.—**HAMILTON v. ISAACSON** (1912), 21 W. L. R. 333.—**CAN.**

**914 iv.** —.].—Pltf. obtained notes from defts. by fraud & deceit which he transferred to pltf. for value before they were overdue; he had no notice of the fraud & deceit:—**Held:** (1) pltf. was a holder for value in due course; (2) there was nothing which

made it incumbent upon pltf. to communicate with defts. before discounting the notes.—**LANGLEY v. JODREY** (1913), 13 E. L. R. 432; 15 D. L. R. 10.—**CAN.**

**916 i.** —.].—Without notice of want of title in transferor—**Neglect to inquire.**—B. indorsed a promissory note made by C. for the purpose of retiring another similar note which he had previously indorsed for C.'s accommodation, & gave it to C. Instead of retiring this note, however, C. handed it to pltf., in payment of a debt, who took it in good faith, but made no inquiry, respecting C.'s title to the note or his authority so to deal with it:—**Held:** pltf. was entitled to recover against B.—**CROSS v. CURRIE** (1878), 43 U. C. R. 599; 5 A. R. 31.—**CAN.**

**916 ii.** —.].—Where a person signs a promissory note for accommodation of the maker & entrusts the custody thereof to the maker, a *bond fide* holder who acquires the said note from the latter obtains thereby an incontestable title thereto & property therein, although in parting with it the maker acts without authority or in breach of express instructions.—**NORTHERN ELECTRIC & MFG. CO. v. KAROW ELECTRIC & SEABORN** (1914), 29 W. L. R. 582.—**CAN.**

**916 iii.** —.].—Pltf. sought to recover the face value of a promissory note together with the costs of protest. The note was signed by deft. to the order of M. Co., who indorsed & delivered it to pltf.:—**Held:** pltf. became holder in due course for value of the note; knew of no condition to invalidate it; & was entitled to cover

was no evidence of *mala fides*.—**RAPHAEL v. BANK OF ENGLAND** (1855), 17 C. B. 161; 25 L. J. C. P. 5; 26 L. T. O. S. 60; 4 W. R. 10; 139 E. R. 1030.

**Joint Stock Bank v. Simmons**, **Venables v. Baring**, [1892] 3 Ch. 527. **Refd.** *Joseph v. Webb*, *Joseph v. Lyons*, *Joseph v. Pidcock*, *Joseph v. Jones* (1884), Cab. & El. 262.

**917.** —.].—A person taking a negotiable instrument in good faith & for value obtains a valid title, though he takes from one who had none.

A broker in fraud of the owner pledged negotiable instruments, together with other instruments belonging to other persons, with a bank as a security *en bloc* for an advance. The bank did not know whether the instruments belonged to the broker or other persons, or whether the broker had any authority to deal with them, & made no inquiries. The broker having absconded, the bank realised the securities:—**Held:** there being as a matter of fact no circumstances to create suspicion, the bank was entitled to retain & realise the securities, having taken negotiable instruments for value & in good faith.—**LONDON JOINT STOCK BANK v. SIMMONS**, [1892] A. C. 201; 61 L. J. Ch. 723; 66 L. T. 625; 56 J. P. 644; 41 W. R. 108; 8 T. L. R. 478; 36 Sol. Jo. 394, H. L.; *reversq.* *S. C. sub nom. SIMMONS v. LONDON JOINT STOCK BANK*, *LITTLE v. LONDON JOINT STOCK BANK*, [1891] 1 Ch. 270, C. A.

**Annotations:**—**Distd.** *Baker v. Nottingham, etc., Banking Co.* (1891), 7 T. L. R. 235. **Consd.** *Venables v. Baring* (1892), 61 L. J. Ch. 609; *Bentley v. London Joint Stock Bank* (1893), 42 W. R. 140; *Manchester Trust v. Furness*, [1895] 2 Q. B. 539; *Smith v. Prosser*, [1907] 2 K. B. 735. **Refd.** *Fuller v. Glyn, Mills, Currie*, [1914] 2 K. B. 168. **Refd.** *Thomson v. Clydesdale Bank*, [1893] A. C. 282; *Redfern v. Rosenthal* (1901), 17 T. L. R. 638; *Molyneux v. Hawtrey*, [1903] 2 K. B. 487; *Weiner v. Gill*, [1905] 2 K. B. 172. **Mentd.** *Louth (Northern Division) Case* (1911), 60 M. & H. 103.

from the maker.—**AUGER v. M. ELL** (1914), Q. R. 15 S. C. 427.—**CAN.**

**916 iv.** —.].—Where a note payable to a third person is indorsed only as collateral security for a concurrent advance made to the payee upon another note, if it is clear that the note was given as part of the security upon which the money was advanced, & if the indorsee has no notice of defects in the title of the payee it is taken in good faith, & the indorsee becomes a holder in due course.

**STATE BANK v. ALBERTA BROKERS** (1915), 33 W. L. R. W. W. R. 851.—**CAN.**

**916 v.** —.].—The holder of a promissory note who secured possession of it before its maturity for valid consideration, in good faith & unaware that it was signed conditionally by the maker, is a holder in due course.—**McLEOD v. McLELLAN** (1916), Q. R. 50 S. C. 283.—**CAN.**

**1.** —.].—Without knowledge of equities attaching to note.—A cheque was given by M. for payment under an agreement for sale by S. to H. of shares. Before the cheque was presented M. stopped its payment upon the ground that it was handed to H.'s solr. in to be delivered to H. when the solr. should have been signed & the share certificates deposited with a Trust Co. In an action by S. (to whom H. after indorsement had handed the cheque) as holder in due course:—**Held:** on the evidence S. had no knowledge of the equities which attached to the note in the hands of H.—**SUTHERLAND v. HARRIS & MCCUAIG** (1918), 15 O. W. N. 251.—**CAN.**

**5.—Holder**

**918. — Gross negligence.**—In an action by the indorsee of a bill who has given value, if his title be disputed on the ground that his indorser obtained the discount of such bill in fraud of the right owner, the question for the jury is, whether the indorsee acted with good faith in taking the bill. The question whether or not he was guilty of gross negligence is improper. Gross negligence may be evidence of *malu fides*, but is not equivalent to it.—**GOODMAN v. HARVEY** (1836), 4 Ad. & El. 870; 6 Nev. & M. K. B. 372; 6 L. J. K. B. 260; 111 E. R. 1011.

**Appld.** *Uther v. Rich* (1839), 10 Ad. & El. 784. **Follid.** *Arhoun v. Anderson* (1841), 1 Q. B. 498. **Appld.** *Jones v. Smith* (1841), 1 Hare, 43. **Reid.** *Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615. **Mentd.** *Re Lowenthal, Ex p. Lowenthal* (1874), 9 Ch. App.

**919. — Lack of care or caution—Affecting bona fides of transaction.**—*Semble*: the old-established rule of law, that the holder of bills of exchange indorsed in blank, or other negotiable securities transferable by delivery, can give a title which he does not himself possess to a person taking them *bona fide* for value, is not to be qualified by treating it as essential that the person so taking them should take them with due care & caution; but the person taking them *bona fide* for value, has a good title, though he take them without care or caution, except so far as the want of such care & caution may effect the *bona fides* & honesty of the transaction.—**FOSTER v. PEARSON, STEPHENS v. FOSTER** (1835), 1 Cr. M. & R. 849; 5 Tyr. 255; 4 L. J. Ex. 120; 149 E. R. 1324.

**Appld.** *Sheffield v. London Joint Stock Bank* 13 App. Cas. 333; *London Joint Stock Bank v. Simmons*, (1892) A. C. 201. **Reid.** *Muttyloll Seal v. Dent* (1853), 5 Moo. Ind. App. 328; *Hentlock v. London Joint Stock Bank*, [1893] 2 Ch. 120.

**920. — Presumption not displaced—By negligence in taking instrument.**—The negligence of a party taking a negotiable instrument, does not fix him with the defective title of the party passing it.—**BANK OF BENGAL v. MACLEOD** (1849), 6 Moo. Ind. App. 1; 7 Moo. P. C. C. 35; 14 L. T. O. S. 285; 13 Jur. 945; 18 E. R. 795, P. C.

**Reid.** *Raphael v. Bank of England* (1855), 25 L. J. C. P. 33. **Mentd.** *Jonmenjoy Condoo v. Watson* (1884), 9 L. J. 561; *Lewis v. Ramsdale* (1886), 55 L. T. 179; *ambro v. Burnand* (1904), 20 T. L. R. 3

**m. — Note payable to**  
**to inquire.**—The indorsee of a promissory note made payable to a trustee is not put on inquiry & does not take subject to equities.—**LENNER v. DAWSON** (1909), 11 W. L. R.

**y knowledge of difficulty in**  
**her notes.**—The fact that a holder knew, at the time of

had not the knowledge in the person whom the question was not disentitle the holder to

**NATIONAL BANK v.**  
**1916), 33 W. L. R. 838; 9**  
**W. W. 1269.**

**920 i. — By negligence in**  
**taking instrument.**—Negligence to discover a fraud, actual ignorance of it being apparent, will not be equivalent to notice & will not affect the title of

**fide negotiable paper.**—**BANQUE**  
**PEUPLE v. BRYANT, POWIS &**  
**BRYANT, LTD.** (1891), 17 Q. L. R. 103.—**CAN.**

**Presumption** **ed by**

**firm.**—Defts. were partners: by the articles of partnership it was required that all bills, drafts, cheques, etc., should be in the name of the firm. C., a & L. were engaged in private not connected with or known to firm, & in the course thereof L., who had no available funds in the firm's hands, drew on them in favour of plff. & C., marked across it "Good." L. then procured plff. to discount it at the rate of 30 per cent. per annum, & to hold it for a month.—**Held**: the draft was not taken by plff. in good faith.—**HOVEY v. CAUSEL** (1879), 30 C. P. 230.—**CAN.**

**921 ii. — Note discounted at high**  
**rate.**—**Neglect to inquire.**—An agree-

**Presumption rebutted by excessive discount—Bill drawn by partner in fraud of firm.**—Plff. having, without inquiry, & at a heavy discount, taken a bill drawn by a partner in fraud of the firm, from a person who had taken it from the fraudulent drawer with knowledge of the fraud, the bill having upon it a name which made it perfectly good.—**Held**: the above facts were evidence on which the jury might presume that plff. took the bill *malu fide*.—**DAILEY v. DE FRIES** (1863), 11 W. R. 376.

**922. — Bill taken at undervalue.**—Though since the repeal of the usury laws, the fact of taking a bill at considerable undervalue is not, of itself, sufficient to affect the title of the holder, it is an important element in considering whether the man who gave the undervalue was acting *bona fide*, in ignorance & error, or was assisting in committing a fraud, & avoided making inquiries because they might be injurious to him (**LORD BLACKBURN**).—**JONES v. GORDON** (1877), 2 App. Cas. 616; 47 L. J. Bey. 1; 37 L. T. 477; 26 W. R. 172, H. L.; *affq.* *S. C. sub nom. Re GOMERSALL* (1875), 1 Ch. D. 137, C. A.

**Annotations.**—**Consd.** *Symons v. Mulkern* (1882), 46 L. T. 763. **Follid.** *Re Boyse, Crofton v. Crofton* (1886), 55 L. T. 391. **Consd.** *Oakley v. Boulton* (1888), 4 T. L. R. 379; *Tatam v. Haslar* (1889), 23 Q. B. D. 345. **Distd.** *Re Aylmer, Ex p. Aylmer* (1893), 70 L. T. 244. **Consd.** *Whitehorn v. Dairson*, [1911] 1 K. B. 463. **Mentd.** *Re Building Estates Brickfields Co., Parbury's Case*, [1896] 1 Ch. 100; *Tait v. MacLeay*, [1904] 2 Ch. 631; *Rainford v. Keith & Blackman Co.*, [1905] 2 Ch. 147.

**923. Cheques taken without proper inquiry—Whether equities affecting overdue bills attach to cheques.**—C. undertook to discount bills for J., & in return for the bills gave cheques to J., upon the understanding that they were not to be presented until there were funds in C.'s bank to meet them. Part of the bills were subsequently handed back by C.'s bankers, & security was given by C. & J. to recover the whole amount of them. J. had meanwhile deposited the cheques with his brother G., as security for money advanced. On C.'s bkpcy., G. sought to prove for the full amount of the cheques. The cheques had been presented & dishonoured.—**Held**: G., having taken the cheques without proper inquiry, took them subject to all the equities attaching to them, & could not prove in respect of them.—**Re COBB, Ex p. HUGHES** (1880), 43 L. T. 577.

**Negotiation of overdue instruments generally,**  
**Part XI., Sect. 6, sub-sect. 1, post.**

ment to pay a high rate of interest or to allow a large discount on a note, where the transaction is in other respects unimpeachable, does not of itself cast upon the holder the duty of making inquiry.—**PERTH DISCOUNT v. STUBBS** (1899), 1 W. A. L. R.

**923 i. — Cheque taken without proper inquiry—Whether equities affecting dishonoured bills apply to cheques.**—In an action upon a cheque by an indorsee for value who had taken it with notice of dishonour, defender, the drawer, proved that he had granted it subject to a condition & that he had stopped payment in consequence of this condition not having been fulfilled.—**Held**: (1) the provisions of 1882 Act as to holders in due course applied to cheques; (2) pursuer was affected by the condition on which the cheque had been granted.—**EMPLE v. KYIE** (1902), 39 Sc L. R. 304.—**SCOT.**



**924. — Bill drawn for accommodation of acceptor—Discounted for acceptor by person desiring to establish set-off as against bankrupt drawer—Knowledge of drawer's bankruptcy.]—**For the accommodation of C., a bill at 3 months for £287, dated Feb. 26, 1821, was drawn by bkpts. upon & accepted by C., & on Mar. 12 bkpts. stopped payment. C. was unable to discount the bill till May 4, 1821, when he persuaded B., his brother-in-law, to give him cash for it. B. knew that bkpts. had stopped payment, & B. being indebted to bkpts. for goods sold & delivered to him by bkpts. to the amount of £136 18s. 4d., C., to induce him to cash the bill, represented to him that he might set-off the bill against the debt. On May 9 the commission issued, & the bill being delivered, B. proved for the difference between the amount of the bill & his debt. On a petition to expunge the proof:—*Held*: in the circumstances B. could not be considered as the holder of the bill *bonâ fide* & the debt must be expunged.—*Re WERTON & PAYNE, Ex p. STONE* (1822), 1 Gl. & J. 191.

— **Cheque drawn to order of fictitious or non-existing payee.]—**See cases in Part II., Sect. 1, sub-sect. 5, *ante*.

— **Lost, stolen, or destroyed bills.]—**See Part XVI., *post*.

**q. Notice of defect in title—Alteration—Apparent.]—**If an alteration is apparent, no person who subsequently takes the note can be a holder in due course.—*GOURRE v. VOSKOBONIK* (1913), Q. R. 45 S. C. 101.—CAN.

**r. — — — — —.]—**If the alteration on a bill or note be apparent, it may be set up against a holder for value.—*ASCH, LTD. v. DUFRESNE* (1916), Q. R. 49 S. C. 508.—CAN.

**s. — — — — —.]—**Onerous indorsee of a bill of exchange, which was manifestly vitiated in the sum, is not entitled to enforce payment of it against an acceptor, where the alteration was not proved to have been made, before issuing the document, with acceptor's knowledge or consent.—*MACLEAN v. MORRISON* (1834), 12 Sh. (Ct. of Sess.) 613; 30 Fac. Coll. 324.—SCOT.

**t. — — — — —.]—**Conversion of a special indorsement into an indorsement in blank by striking out the words "Pay to the order of the H. Bank of C.," above the signature by a firm & its individual partners on the back, is a circumstance sufficient to put the holder on inquiry as to the right of one partner to discount it for himself.—*PICKUP v. NORTHERN BANK* (1909), 18 Man. L. R. 675.—CAN.

**u. — — — — —.]—**Forms intended to be filled up & used as promissory notes were signed by deft. as maker. The forms contained the name of a bank as the place of payment. The payee filled in the blanks, struck out the name of the bank & filled in a fresh place of payment. The bills were subsequently indorsed to pltf.:—*Held*: the changes being apparent pltf. was put upon inquiry & could stand in no better position than the payee who made the unauthorized alterations.—*BELLAMY v. WILLIAMS* (1918), 41 O. L. R. 244; 40 D. L. R. 398; 13 O. W. N. 259.—CAN.

**v. — — — — —.]—**Enforcement of payment according to original tenor.]—A co. being indebted to pltf., the co.'s manager delivered to

**w. — — — — —.]—**Notice of defect in title—Presumed from bill being taken when overdue.]—Action by indorsee against maker of a promissory note. The note was indorsed some time after it was due, & there were many circumstances which led the ct. & the jury to conclude that it was fraudulently obtained:—*Held*: there must be judgment for deft.

It has never been determined that a bill or note is not negotiable after it becomes due, but if there are any circumstances of fraud in the transaction, & it comes into the hands of pltf. by indorsement after it is due, I have always left it to the jury upon the slightest circumstance to presume that the indorsee was acquainted with the fraud (*BULLER, J.*).—*TAYLOR v. MATHER* (1787), 3 Term Rep. 83, n.; 100 E. R. 467.

**926. — — — — —.]—**Must be notice to payee & not to indorsee—Action against partners on bill signed by another partner in firm name.]—In an action against other partners, on a bill accepted by one in the name of the firm, if pltf. be an indorsee, defts. must show that the payee had notice of the resolution of the rest of the firm to dissolve the partnership, & be no longer answerable for any such bills, & if that be not done, it is not sufficient to prove that the indorsee had notice, for he is entitled to avail himself of any circumstance which would operate in favour of the

pltf. a note purporting to be by officers of the co. The evidence showed that after the note had been signed, but before its delivery, the manager altered the note by inserting the words "jointly & severally." at the time of delivery were ignorant of this fact:—*Held*: the note might be sued upon in its original condition.—*WATEROUS ENGINE WORKS CO. v. MCLEAN* (1885), 2 Man. L. R. 279.—CAN.

**y. — — — — —.]—**gave N. a promissory note intended as a renewal. When deft. made the note, the word "renewal" was, at his instance, written near the lower left-hand corner. N. erased the word "renewal," the erasure not being apparent without the use of a magnifying glass, & discounted the note with pltf.:—*Held*: the alteration not being apparent, & pltf. having taken a note complete & regular on its face in good faith & for value without actual notice, were "holders in due course," & entitled to recover the amount according to the original tenor, the word "renewal" not forming part of the contract to pay.—*MAXON v. IRWIN* (1907), 10 O. W. R. 537; 15 O. L. R. 81.—CAN.

**z. — — — — —.]—**name of an alleged maker of a note was not signed by him or with his authority, but was added to the note after some & before other joint makers had signed it. In an action by pltf., a holder for value:—*Held*: pltf. being the holder of the note in due course, & the alteration not being apparent, could avail himself of it as if it had not altered.—*CUNNINGTON v.* (1898), 29 O. R. 346.—CAN.

**aa. — — — — —.]—**A note was made by filling up an engraved form. Between the words "after date" & "promise to pay" the space left for the usual words "I" or "we" was very small, & the words "jointly & severally" could not have been written in the space:—*Held*: in such case the mere fact that the words "jointly & severally," written in the same hand-

writing as the rest of the note, were plainly interlined over the place where they were intended to be read, is not sufficient notice of an alteration.—*WATEROUS ENGINE WORKS CO. v. MCLEAN* (1885), 2 Man. L. R. 279.—CAN.

**bb. — — — — —.]—**of agreement by drawer.]—A bill of exchange drawn by a co. upon & accepted by defts. was delivered by the co. to pltf., who placed it to its credit upon an overdrawn account. Defts. accepted the bill for accommodation of the co. & upon the distinct understanding that defts. would not be called upon to pay unless they were, at its maturity, indebted to the co.; pltf. were aware of those facts:—*Held*: pltf. were in no better position than the co. & not holders in due course.—*STANDARD BANK*

O. W. N. 187; 33 O. L. R. 411; 23 D. L. R. 507.—CAN.

**cc. — — — — —.]—**Indorsement for limited purpose.]—H. who was a travelling agent for pltf., arranged with deft. to raise \$1,000 to purchase an interest in the latter's business. Deft. in order to enable H. to raise the money indorsed two promissory notes made by H. in favour of pltf. H. sent the notes to pltf. & the latter asserted that they were sent to apply to the former's holders in due course since the notes in the first instance were given for a limited purpose, & pltf. had knowledge of such purpose.—*STIRTON v. HARVEY* (1908), 8 W. L. R. 185.—CAN.

**dd. — — — — —.]—**Interest overdue at time of — — — — —.]—The indorsee of a promissory note made payable with interest, payable annually, who acquired the note after default in payment of one of the annual interest instalments & with knowledge of the default, is not a holder of the note in due course.—*MOORE v. SCOTT* (1907), 5 W. L. R. 8, 381; 16 Man. L. R. 498.—CAN.

**ee. — — — — —.]—**A note sued on made without consideration: pltf. it from bankers, paying



# 142 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 5.—Holder in due course.]*

payee.—ROOTH v. QUIN & JANNEY (1819), 7 Price, 198; 146 E. R. 944.

*Annotation:—Mentd.* Perham v. Raynall (1824), 9 Moore, C. P. 566.

**927. — Set-off between maker & payee of note.]—**Where a person with an indorsement of a promissory note from the payee, with notice that the payee was indebted to the maker in a greater amount than that in the note, on separate transactions:—*Held*: the indorsee could not recover on the note, except to the amount of some advances he had made on the security of the note before he had the notice.—GOODALL v. RAY (1835), 4 Dowl. 76; 1 Har. & W. 333.

*Annotations:—Dtbl.* Whitehead v. Walker (1842), 10 M. & W. 696. *Reid.* Oulds v. Harrison (1854), 10 Exch. 572; *Bechervaise v. Lewis* (1872), L. R. 7 C. P. 372.

**928. — Breach of agreement by drawer.]—**

To an action by payee against acceptors of two bills of exchange, defts. pleaded a plea, alleging that the bills were accepted by them & A., not by them alone, & that before the bills were due, & before the delivery to pltf., it was agreed between the drawers, & defts. & A., that, in consideration of defts. & A. paying the drawers £500 in settlement of accounts, the drawers would accept a dividend of 2s. 9d. in the pound on those & other bills accepted by defts. & A., & within 1 month would deliver up the bills, receiving the dividend on each acceptance, that a place for the tender of the composition was agreed upon, & a penalty of £500 agreed to be paid on default on either side, that the £500 in settlement of accounts was paid to the drawers, & the composition duly tendered within the month, & alleging a refusal by the drawers to accept the sum tendered, or to deliver up the acceptances, & delivery of the bills to pltf. in fraud of the agreement, & that pltf. took & held the bills with notice of the premises:—*Semle*: the plea contained no defence to the action.

—BUTTICORSE v. BOOKER (1850), 9 C. B. 689; 1 L. M. & P. 444; 19 L. J. C. P. 330; 15 L. T. O. S. 228; 137 E. R. 1063.

**929. — Proof—Admissibility of evidence.]—**

—Under a plea of illegality of consideration & notice thereof to an action on a bill of exchange, evidence of the pecuniary circumstances of the from whom the holder obtained it may be as it may afford a ground for the jury to infer that the holder had notice.—HILL v. FORD (1844), 4 L. T. O. S. 195, N. P.; *proceedings* (1845), 4 L. T. O. S. 289.

**930. — Sufficiency of evidence.]—**To an action by indorsee against A. & B. as drawers of a bill of exchange, indorsed to C., & by him to

ptlf., A. pleaded, that he & B. were in co-partnership as brewers, that B. made & indorsed the bill, using the name of the firm, in fraud of A., & not for the purposes of the co-partnership, but for his own private purposes, viz. for a private debt due from him to C., & without the knowledge or consent of A., that there was no consideration or value to him, A., for the drawing or indorsement of the bill, of all which premises C., at the time of the indorsement to him, had knowledge & notice, & that at the time when the bill was indorsed & delivered to pltf. he had full knowledge & notice of all the premises in the plea aforesaid. Replication, that at the time when the bill was indorsed & delivered to pltf., he had not any such knowledge or notice as in the plea mentioned. At the trial, the jury found that C. had no knowledge of the original fraud in the drawing of the bill, but that pltf., at the time of the indorsement to him, had knowledge of that fraud:—*Held*: the plea was not proved.—MAY v. CHAPMAN (1847), 16 M. & W. 355; 8 L. T. O. S. 369; 153 E. R. 1225.

*Annotations:—Reid.* Raphael v. Bank of England (1855), 25 L. J. C. P. 33; *Spackman v. Evans* (1868), L. R. 3 H. L. 171. *Mentd.* Jones v. Gordon (1877), 2 App. Cas. 616; *Joseph v. Webb* (1883), Cab. & El. 222.

**931. — Holder requiring evidence of title—Deception by drawers.]—**The holder of a bill, who, without any express notice of any circumstance of suspicion, took the bill, not in the ordinary course of business & not relying on the security, required evidence of title in the drawer to negotiate the bill which deceived him, has only his remedy against the drawer personally who deceived him, & he can have no better title on the bill than the drawer had.—HATCH v. SEARLES (1854), 2 Sm. & G. 147; 22 L. T. O. S. 280; 2 W. R. 242; 65 E. R. 342; *affd.* 24 L. J. Ch. 22, L. JJ.

*Annotations:—Consd.* Carter v. White (1882), 20 Ch. D. 225. *Reid.* Franco v. Clark (1884), 26 Ch. D. 257. *Mentd.* Faulks v. Atkins (1893), 10 T. L. R. 178.

**932. — Knowledge that person offering same was agent only.]—**Action on a bill of exchange for £33. Plea, that the indorsement had been made in blank, & not specially, & that the bill had been handed to T. to get it discounted & hand over the proceeds to deft., that T. did not hand over the proceeds, & that pltf. had notice of the premises. The bill was brought to pltf. by T. with three other bills, & he paid over to T. £25 upon the three bills, the bill in question being for £33. Pltf. knew that T. was only the agent of deft., & that he gave him no sufficient consideration to satisfy the bill. A verdict having been given for deft. on the above plea:—*Held*: there must be a new trial.—CASTRIQUE v. TROUTBECK (1855), 25 L. T. O. S. 69.

its face value & interest, which overdue at the time of purchase:—*Held*: pltf. was saddled with notice of defects in the transferor's title, or at all events was put upon his inquiry & was not a bona fide transferee or holder in due course.—PERRINS v. IRAS (1909), 13 Alta. L. R. 80; 1 R. 344; 7 W. L. R. 193.—CAN.

**927 i. —** of which an indorsee by the payor to the maker not equity attaching to the note be set off as against an indor in due course for value.—O'BRIEN JOHNSTON (1897), 3 Terr. L. CAN.

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Held: pltf. was not a holder in due course.—IRELAND v. ANDREWS 6 Terr. L. R. 66.—CAN.

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of M.; it to pltf.:—*Held*: the fact of the to be for the use of notice; it 's right as against G.—(1870), 30 U. C. R.

of M. was showed onl

upon promissory note an to a co. prohibited from it was proved that the

to agent of indorsee.)—G. made notes payable to I., & fraudulently procured his indorsement in blank. He then handed them to R. an agent of E. who delivered them to E.; the latter subsequently had them discounted by pltf. bank. Before the transaction was complete, their acting manager had notice of the manner in which I.'s indorsement had been obtained:—*Held*: I. was not liable on the notes.—MERCHANTS v. GRIMMAY (1904), 3 O. W. R. 4 O. W. R. 173.—CAN.

**933. Knowledge that payee was married woman.]**—A bill of exchange was drawn in favour of a married woman, & sent by her trustees in a letter to her. Her husband surreptitiously obtained possession of the bill, & signed her name to it without her knowledge or concurrence, & having indorsed & discounted it through P., who also indorsed it, he absconded. The wife, before the bill became due, discovered the fraud, & gave notice to the acceptors, who refused to pay at maturity. The discounters recovered at law against P., who sued the acceptors. The wife, by her next friend, filed her bill to restrain the action, & prayed that the acceptors might be ordered to pay the money to her on her separate receipt. *ROMILLY, M.R.*, having decided that the payee being a married woman affected the party taking the bill with notice that it was the separate property of the wife, & that the acceptors must pay the money to the married woman:—*Held*: P. was a *bonâ fide* holder for value, & as such legally entitled to the bill, & the ct. would not interfere to defeat such title, & no blame was attributable to him for not making inquiries other than of the husband, as to the wife's signature. —*DAWSON v. PRINCE* (1857), 2 De G. & J. 41; 27 L. J. Ch. 169; 30 L. T. O. S. 237; 4 Jur. N. S. 497; 8 W. R. 171; 44 E. R. 903, L. J.J.

*Annotations*:—*Consd.* Macbryde v. Eykyn (1871), 24 L. T. 461. *Mentd.* Lloyds Banking Co. v. Jones (1885), 29 Ch. D. 221.

**934. — Notice to agent of indorsee—Failure to inquire so as to avoid finding out.]**—Notice to the indorsee's agent is notice to the indorsee, & if a party suspects a fraud & does not ask as to it, lest he should know it, he has sufficient notice. —*OAKLEY v. OODDEEN* (1861), 2 F. & F. 656, N. P.; *subsequent proceedings* (1862), 11 C. B. N. S. 805.

**Knowledge that name was unauthorised.]**—In an action by indorsee against maker & indorser, a verdict was found in favour of the maker, on the ground that his name had been signed to the note without authority, & against the indorser:—*Held*: the jury were rightly directed that the fact of the maker's name having been used without authority was a fact material for them to consider in connection with other evidence offered to show that plff. took the note with knowledge of the circumstances. —*HANSCOME v. COTTON* (1859), 16 U. C. R. 98.—*CAN.*

**p. — Where a jury found that the makers' names to the notes sued on were forged by C. & indorsed by him in the name of his firm without the knowledge of B. his partner & discounted by plffs. through their manager, in the ordinary course of business honestly & in good faith but that such manager knew that the indorsing partner was not authorised by the other partner, in an action the firm:]**—*Held*: on the finding of good faith justified & effect should be given thereto. —*CROWN BANK v. BRASH* (1906), 8 O. W. R. 400.—*CAN.*

**q. — Breach of agreement by payee.]**—A promissory note made by defta. was given to A. Co. on the understanding that it would not become negotiable unless defta. were able to discount a note made by A. Co., which in fact they were never able to do. A. Co. gave plff. defta.' note on account of a debt they owed him: *Held*: on the evidence, plff. had notice of the

agreement between A. Co. & defta., or knew that they could not negotiate the note except in fraud of that agreement. —*MURRAY v. WURTELE* (1902), 1 O. W. R. 298.—*CAN.*

**r. — Breach of purpose.]**—C. approached directors of a co. stating he owed a large sum for taxes & that he had deposited a post-dated cheque for payment of that sum in order to save the discount but that such cheque was then due & if the directors would give him a post-dated cheque he might secure further time from the tax-collector; the cheque was given to C. who at once indorsed it to plff. his confidential clerk. The co. stopped payment of the cheque. Plff. had given no value & knew before indorsement how C. obtained the cheque:—*Held*: he was not a holder in due course. —*CAMPBELL v. NATIONAL CONSTRUCTION CO.* (1909), 12 W. L. R. 152; 14 B. C. R. 444.—*CAN.*

**937 i. — Facts sufficient to raise suspicion.]**—The fact that a holder of a cheque takes it some days after its date, is a material fact in deciding whether the cheque was taken in circumstances that ought to have aroused the holder's suspicion. —*HAYES v. ...*, 15 V. L. R. 480.—*AUS.*

**937 ii. — Evidence that the indorsee had on previous occasions bought promissory notes from the same payee in similar suspicious circumstances, & had heard rumours of their fraudulent nature, is admissible to prove notice or suspicion in the mind of the indorsee, & that he**

*Hogg v. Skeen* (1865), 11 Jur. N. Oakley v. Boulton (1888), 4 T. L. R. 379.

**935. — Agent himself fraudulently dealing with acceptances.]**—W. fraudulently obtained possession of acceptances of C., & he got them discounted & carried to his account by a banking co., to whom he was greatly indebted, & of which he was a director & local manager: *Held*: in the circumstances, the bank had notice, & could not be considered *bonâ fide* owners. *Re CAREW'S ESTATE ACT* (No. 2) (1862), 31 Beav. 39; 54 E. R. 1051.

*Annotation*:—*Mentd.* Greenwell v. National Provincial Bank (1883), Cab. & El. 56.

**936. — Knowledge of director that bills accommodation bills—Director not concerned in matter on behalf of company.]**—The knowledge of a director that bills indorsed for value to his co. were bills which had been accepted for the accommodation of the drawer, the director not having been concerned on behalf of his co. in the transaction, in which the bills were indorsed to the co.:—*Held*: not to affect the co. with notice of the fact of their being accommodation bills. —*PERUVIAN RAILWAYS CO. v. THAMES & MERSEY MARINE INSURANCE CO.*, *Re PERUVIAN RAILWAYS CO.* (1867), 2 Ch. App. 617; 16 L. T. 644; 15 W. R. 1002, L. J.J.

*Annotations*:—*Reid.* Kenny's Patent Button-Holding Co. v. Somervell Lutwyche (1878), 38 L. T. 878. *Mentd.* *Re Imperial Silver Quarries Co.* (1868), 16 W. R. 1220; *Re General Co. for the Promotion of Land Credit* (1869), 5 Ch. App. 367, n.; *Guinness v. Land Corp'n. of Ireland* (1882), 22 Ch. D. 319; *Atkins v. Wardle* (1882), L. J. Q. B. 377.

**937. — Facts sufficient to raise suspicion—Duty to investigate.]**—If facts come to the knowledge of the holder which are such as to raise a suspicion in his mind that there is some defect in the title to the bill, & he makes no further inquiry,

deliberately refrained from inquiry. If there is evidence sufficient to raise a doubt in the jury's mind as to the good faith of an indorsee, though the evidence may not conclusively establish bad faith on his part, the ct. will not interfere with the finding of the jury that the indorsee had not satisfied the burden cast on him. —*OLDSTAR v. LINHAM* (1908), 1 Alta. L. R. 416; 8 W. L. R. 152.—*CAN.*

**C. two promissory notes, payable to C. or bearer, but having indorsed on them, contemporaneously with their making, & in the case of one of them on the edge of the paper, the words "the within notes not to be sold," such indorsements forming part of the contract between the parties. The notes were transferred to S., with the word "not" in one indorsement, & the whole of the indorsement written along the edge of the other torn off, but without destroying any part of its face. S. had been informed before taking the notes that they were given in purchase of patent rights; that he noticed the erasure & that he paid much less than the commercial value of them, while they both bore marks of infirmity & indeed of knavery:—*Held*: S. could not be considered an innocent holder. —*v. DAVIDSON* (1883), 3 O. R.**

**937 iv. — Duty to investigate.]**—Plff., having discovered that bills on which he had lent money to M. had been forged by M., required him to show them with genuine bills satisfactory to plff. M. offered a note indorsed by



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*Sect. 5.—Holder in due course. Sect. 6: Sub-sects. 1 & 2, A. & B.]*

he cannot recover upon it.—*FREY v. IVES* (1892), 8 T. L. R. 582, C. A.

**Agreements affecting delivery.]—See Part VIII., ante.**

## SECT. 6.—LEGALITY OF CONSIDERATION.

### SUB-SECT. 1.—WHAT CONSTITUTES ILLEGAL OR VOID CONSIDERATION.

*See, generally, CONTRACT.*

**Apprenticeship.]—See INFANTS & CHILDREN; MASTER & SERVANT.**

**Fraud on bankruptcy laws.]—See BANKRUPTCY & INSOLVENCY; CONTRACT.**

**Fraud on revenue laws.]—See CONTRACT;**

**by the Gaming.]—See GAMING & WAGERING.**

**brokage.]—See BONDS; CONTRACT;**

**Money-lending.]—See EQUITY; MONEY & MONEY-LENDING.**

**Smuggling.]—See CRIMINAL LAW & PROCEDURE; REVENUE.**

**Stifling prosecution.]—See CONTRACT.**

**Usury.]—See EQUITY; MONEY & MONEY-LENDING.**

### SUB-SECT. 2.—EFFECT OF ILLEGAL OR VOID CONSIDERATION.

• See 1882 Act, s. 29 (2) (3).

#### A. On Immediate Parties.

**938. Marriage brokage.]—In equity a promissory note in the nature of a marriage brokage bond was not enforceable in the hands of the original holder.—COTTON (EXECUTORS OF) v.**

deft., & plff. agreed to accept this. They proceeded together to deft. M. falsely represented to deft. that the bill was required to meet a call upon him in connection with a business undertaking. Deft. agreed to indorse a note, which note was made out & signed by M., & indorsed by deft. in the presence of plff. There was no evidence of an actual knowledge on the part of plff. of what passed between M. & deft. when deft. agreed to

such as to put plff. upon inquiry. *ONIS v. ALMON* (1899), 18 N. Z. L. R. 449.—N.Z.

#### PART X. SECT. 6, SUB-SECT. 2.

*Indorsement for*  
v. *HOWLAND*  
C.A. —CAN.

b. Sale in of  
A

to a vendor with fraud of the be recovered on

by such vendor payee.—*JACQUES CARTIER v. GAGNON* (1894), Q. R. 5 S. C. 499; Q. R. 6 S. C. CAN.

c. Consent to comp  
A promissory note, given by an insolvent to a creditor, in excess of the composition payable under an agreement of composition, to induce the creditor to sign such agreement, is absolutely null, & no action upon such note can be maintained by the creditor.—*GREENE & SONS Co. v. TOBIN* (1892), Q. R. 1 S. C. 377.—CAN.

d. —.]—In an action by plff. to recover payment of promissory notes made by deft. it was shown that their consideration was that plff. should secure signatures to a composition deed, in order that signatures of other creditors might be obtained:—*Held*: plff.'s action not be maintained.—*FISHER v. S. C.*

e. —.]—A note given to a creditor on condition of his consent to a composition deed between

*CATLYN* (1730), 2 Eq. Cas. Abr. 525; 22 E. R. 443, L. C.

**939. —.]—Plff. gave deft. a note for £2,000 for undertaking to procure him a marriage. The fact being supported by an affidavit, the ct. made an order on deft. to keep the note in his own possession, & not assign or indorse it over, but would not extend the injunction so far as to prevent him from proceeding at law.—*SMITH v. AYKWEEL* (1747), 3 Atk. 566; 26 E. R. 1126, L. C.**

**940. Smuggling.]—Deft. may set up an illegal consideration, e.g. a smuggling consideration, against an action on a note of hand.—*GUICHARD v. ROBERTS* (1763), 1 Wm. Bl. 445; 96 E. R. 255.**

**941. Illegal apprenticeship deed.]—It is no objection to an action on a promissory note, that it was given as part of the consideration of an indenture of apprenticeship for less than seven years by being ante-dated, such indenture being only voidable.—*GRANT v. WELCHMAN* (1812), 16 East, 207; 104 E. R. 1067.**

*Annotations:—Distd. Solly v. Hinde* (1834), 2 Cr. & M. 516. *Reid. Day v. Nix* (1824), 9 Moore, C. P. 159; *Westlake v. Adams* (1858), 5 C. B. N. S. 248. *Mentd. R. v. Barmston* (1838), 7 Ad. & El. 858.

**942. Gaming.]—To a declaration by drawer against acceptor of two bills of exchange for £50 each, deft. pleaded that he accepted the bills at the request of a third person to whom he had lost £100 by gaming, & in consideration of the sum so lost, that there was no other consideration, & that plff., when the bills were drawn & accepted, had notice of the gaming consideration. Replication, *de injuriâ*. It appeared on the trial that deft. at first accepted, in consideration of the gaming transaction, a bill drawn by plff. for £100, which was dishonoured, & plff. then gave him time, & took the acceptances declared upon by way of renewal, & that plff. at that time knew of the gaming transaction:—*Held*: the validity of the above plea was not affected by Gaming Act, 1845 (c. 109), s. 18, which made the contract, but not a security, void, for, under Gaming Act, 1835 (c. 41), s. 1, the consideration for the security was illegal, & plff. was not a *bonâ fide* holder.—*HAY v. AYLING* (1851), 16 Q. B. 423; 20 L. J. Q. B. 171; 17 L. T. O. S. 20; 15 Jur. 605; 117 E. R. 941.**

—*Consd. Woolf v. Hamilton*, [1898] 2 Q. B. 337.

debtor & his creditors, is null & void between the parties.—*BELLEMARE v. GRAY* (1899), Q. R. 16 S. C. 581.—CAN.

f. *Fraudulent sale of bankruptcy*  
.]—A promissory note in favour of a creditor & inspector of an abandoned estate, to procure his assent to the sale of the assets to the maker of the note, is void & no action will lie to recover on it.—*EVANS & SONS LTD. v. TRACKY* (1906), Q. R. 29 S. C. 97.—CAN.

g. *Loan for*  
Plff. had advanced money to deft. for the opening of a "bucket shop" & took his note therefor:—*Held*: he could not recover.—*ALLAN v. ROBERT* 3 E. L. R. 556.—CAN.

h. *Illegal demise.]—Comrs. of a turnpike trust, made a demise beyond the scope of their powers; the tenant enjoyed his term at the expiration of which the comrs. took a promissory note from the tenant for the rent:—Held: the comrs. could not sustain an action upon such note, because the pay the note arose upon an*



**943. Abroad—Consideration valid according to foreign law.]—**Deft. gave to pltf. in Algiers a cheque drawn by him on an English bank, partly in payment of money lent by pltf. to deft. to enable deft. to play at baccarat in a club at Algiers, & as to the balance, to be applied by pltf. in discharging debts incurred by deft. when playing at baccarat in the club. The consideration for the cheque was legal according to the law of France. In an action on the cheque:—*Held*: inasmuch as the transaction was governed by English law, the cheque must be deemed to have been given for an illegal consideration within Gaming Act, 1835 (c. 41), s. 1, & the action was not maintainable.—*MOULIS v. OWEN*, [1907] 1 K. B. 746; 76 L. J. K. B. 396; 96 L. T. 596; 23 T. L. R. 348; 51 Sol. Jo. 306, C. A.

*Annotations*:—*Folld. Browne v. Balloy* (1908), 24 T. L. R. 644. *Consd. Saxby v. Fulton*, [1909] 2 K. B. 208. *Folld. Société Des Hôtels Réunis v. Hawker* (1913), 29 T. L. R. 578. *Reid. Hyams v. Stuart King*, [1908] 2 K. B. 696. *Mentd. Re Bonacina, Le Brasseur v. Bonacina*, [1912] 2 Ch. 394.

**944. Betting—At billiards.]—**A cheque on a banker given by the loser to the winner for money lost at billiards by betting on the event of the game cannot be sued on except by a *bond fide* holder. Such cheque is "a bill," "note," or "other security," within Gaming Act, 1710 (c. 19), s. 1, & such cheque will, by virtue of Gaming Act, 1835 (c. 41), be held to have been given for an illegal consideration.—*PARSONS v. ALEXANDER*, [1891] 1 Q. B. 263; 24 L. J. Q. B. 277; 25 L. J. P. 693; 1 Jur. N. S. 660; 119 E. R. 479; 3 C. L. R. 1388; 119 E. R. 479.

*Annotation*:—*Mentd. Dyson v. Mason* (1889), 58 L. J. M. C. 55.

**945. — At racing.]—**A promissory note, given to secure money advanced for payment of racing bets, is not to be deemed to have been given for an illegal consideration within Gaming Act, 1835 (c. 41).—*Re LISTER, Ex p. PYKE* (1878), 8 Ch. D. 754; 47 L. J. Bcy. 100; 38 L. T. 923; 26 W. R. 806, C. A.

*Annotations*:—*Reid. Re O'Shea, Ex p. Lancaster*, [1911] 1 K. B. 100; 80 L. J. K. B. 100; 101 L. T. 100; 119 E. R. 100.

**Illegal consideration.—IRELAND v. GUESS** (1847), 3 U. C. R. 220.—CAN.

**k. —.]—**Justices were authorised by statute to lease land by auction only; they leased it without so doing & took a note for rent from the tenant. In an action by them on the note against the tenant:—*Held*: deft. was not liable on it.—*FREDERICTON CITY v. (1857)*, 3 All. 583.—CAN.

**l. —.]—***Assumpsit* by a landlord against his tenant on a promissory note. A promissory note was made to secure rent & tithe rentcharge, under a letting made after Lord Stanley's Act:—*Held*: the note was void.—*LISLE v. CONNOR* (1841), Arn. M. & O. 238.—

**m. Compounding crime.]—**A promissory note was executed as consideration for compounding a charge of grievous hurt against a person. In an action by the payee against the maker:—*Held*: the promissory note was unenforceable.—*MOTTAI v. THANAPPA* (1912), 1 L. R. 37 Mad. 385.—IND.

**946 i. Stifling prosecution.—Drawer & acceptor.]—**In an action by drawer against acceptor upon a bill of exchange the defence alleged that the bill sued upon had been accepted by deft. in consideration of pltf. forbearing to with criminal proceedings

which pltf. had threatened to on the ground of the alleged forgery:—*Held*: the defence was bad, on the ground that the forbearing to proceed with the criminal proceedings was not illegal, inasmuch as no criminal proceedings had actually been commenced, nor was there any reasonable or probable cause for believing a criminal act to have been committed.—*ROURKE v. MEALY* (1879), 41 L. T. 168.—IR.

**946 ii. — Indorser & —.]—**Pltf., discovering that bills on which he had lent money to M. had been forged by him, threatened to prosecute unless a satisfactory settlement were arrived at. M. offered a note indorsed by deft. which pltf. accepted:—*Held*: the transaction between pltf. & M. was illegal; & deft. could set up the illegality as a defence.—*HARRIS v. ALDOUS* (1899), 18 N. Z. L. R. N.Z.

**n. Transaction in breach of License Act, s. 13 (8).]—**Defts. bills of exchange for the price of intoxicating liquors sold & delivered by pltf. to them. In an action against them on the bills, defts. pleaded that the sale was illegal, the order having been solicited within Saskatchewan to be supplied from a point outside Saskatchewan in contravention of the

above sub-sect.:—*Held*: the order for the liquors being the result of illegal solicitation, pltf. could not recover.—*STRANO v. McEWAN*, [1917] 3 W. W. R. 310.—CAN.

100; Saxby v. Fulton, [1909] 2 K. B. 208.

See, generally, GAMING & WAUERING.

**946. Stifling prosecution.]—**The secretary of a building society, who had made default in accounting for money paid to him & was threatened by the society with a prosecution for embezzlement, applied for assistance to pltf.s., his relatives, & they gave a written undertaking to the society to make good the greater part of the debt due from the secretary, the expressed consideration being the forbearance of the society to sue the secretary for the amount for which pltf.s. made themselves responsible, & in pursuance of that undertaking they gave two promissory notes & some title deeds as collateral security to the society. Pltf.s. in giving the undertaking were actuated by the desire to prevent the prosecution, & that was known to the directors of the society; but no promise was made that there should be no prosecution. The society brought an action on the promissory notes in the Q. B. Div., & pltf.s. brought an action in the Ch. Div. to set aside the promissory notes & the collateral securities, on the ground that they were made for an illegal consideration:—*Held*: (1) it was an implied term of the agreement that there should be no prosecution; (2) the agreement was founded on an illegal consideration, & void, & the society could not recover on the promissory notes or enforce the securities.—*JONES v. MERIONETHSHIRE PERMANENT BENEFIT BUILDING SOCIETY*, [1892] 1 Ch. 173; 61 L. J. Ch. 138; 65 L. T. 685; 40 W. R. 273; 8 T. L. R. 133; 36 Sol. Jo. 108; 17 Cox, C. C. 389, C. A.; *affg.*, [1891] 2 Ch. 587.

*Annotation*:—*Mentd. McClatchie v. Haslam* (1891), 65 L. T. 691.

### B. On Remote Parties.

**947. General rule.]—**In an action by indorsee against maker of a promissory note, declarations of the payee, not uttered at the time of making the note, are not evidence to prove that the consideration for the note was money lost at play,

above sub-sect.:—*Held*: the order for the liquors being the result of illegal solicitation, pltf. could not recover.—*STRANO v. McEWAN*, [1917] 3 W. W. R. 310.—CAN.

### PART X. SECT. 6, SUB-SECT. 2. —B.

**947 i. General rule.]—**Even though a promissory note is given for an illegal consideration & one contrary to public morals, the holder thereof before maturity & in good faith for valid consideration, who is unaware of the origin of the note & its primary unlawful consideration, may recover upon it.—*DUBUC v. ST. VINCENT* (1916), Q. R. 50 S. C. 288.—CAN.

**947 ii. — Illegal consideration.]—**A *bond fide* holder without notice of a note transferred for good consideration as collateral security may enforce it, though void for illegality as between maker & payee.—*CANADIAN BANK OF COMMERCE v. GURLEY* (1880), 30 C. P. 588.—CAN.

**947 iii. — Transaction against public policy.—Indorsee with notice.]—**Pltf., an attorney, having refused to defend H., until satisfied as to his remuneration, agreed so to do on H.'s wife indorsing over to him a note which H. had procured deft. to make to her.

Subsequently, defts. discovered that

**Sect. 6.—Legality of consideration: Sub-sect. 2, E**

it be previously shown that the indorsee is identified in interest with the payee, as by having taken the note after it was due, or without any consideration.

—**BEAUCHAMP v. PARRY** (1830), 1 B. & Ad. 89; L. & Welsb. 334; 8 L. J. O. S. K. B. 367; 109 E. R. 720.

**Annotation:** **Fold.** Phillips v. Cole (1839), 2 Per. & Dav. 288.

**948. Marriage brokage—Note taken overdue & without actual payment of consideration.]**—In equity a promissory note in the nature of a marriage brokage bond was not enforceable in the hands of an assignee, who took it when it was overdue without inquiry & without actual payment of valuable consideration.—**CORTON (EXECUTORS OF) v. CATLYN** (1736), 2 Eq. Cas. Abr. 525; 22 E. R. 443, L. C.

Overdue bills generally, see Part XI., Sect. 6, *post*.

**949. Insurance of lottery tickets—Indorsee with notice—Right to recover money paid to bonâ fide holder.]**—A man who, at the request of the holder of a note, has put his name upon it & thereby been obliged to pay the contents to a bonâ fide holder, may recover the money paid from any person whose name is on the note, although he knew it was given on an illegal consideration, *e.g.* premiums for the insurance of lottery tickets.—**SEDDONS v. STRATFORD** (1794), Peake, 281, N. P.

**950. Illegal stock jobbing transactions—Indorsee with notice.]**—Where a broker pays money on of illegal stock jobbing transactions for principal, & the principal pays him the money so advanced, by a bill of exchange, an indorsee who knows the consideration of the bill cannot recover on it.—**STEERS v. LASHLEY** (1794), 6 Term Rep. 61; 101 E. R. 435.

**Annotations:** — **Fold.** Brown v. Turner (1798), 7 Term Rep. 630. **Dtd.** *Ex p.* Bulmer (1807), 13 Ves. 313. **Dtd.** Day v. Stewart (1829), 3 Moo. & P. 334. **Mentd.** Aubert v. Mase (1801), 2 Bos. & P. 371; Clayton v. Dilly (1811), 4 Taunt. 165; McCallan v. Mortimer (1842), 9 M. & W.

**951. — Bill indorsed after becoming due.]**—If a broker draw on his employer for differences paid for him in stock jobbing transactions, & the employer accept the bill, & then the broker indorse it to a third person after it is due, the latter cannot recover on the bill.—**BROWN v. TURNER** (1798), 7 Term Rep. 630; 101 E. R. 1169.

**Annotations:** — **Mentd.** Aubert v. Mase (1801), 2 Bos. & P. 371; McCallan v. Mortimer (1842), 9 M. & W. 636.

Negotiation of overdue instruments, see Part XI., Sect. 6, sub-sect. 1, *post*.

**952. — Indorsee without notice.]**—In an action by an innocent indorsee of a bill of exchange against the acceptor, it is no defence that the bill

no value had been given for the note, but that it had been obtained by H.'s fraud, of which, however, the wife was ignorant, & they then notified

did not acknowledge  
In an action on the note:  
he could not recover, for the transaction was void as against public

**947 iv.** —  
with notice is without a remedy  
a maker if the given by  
him for

**HARRIS v. KNIGG'S**  
2 S. C.

**g. Immoral**  
**ALIPOI**  
**CAN.**

subsequent holder of  
a cheque has no legal recourse against  
the maker when it is established that  
the consideration has been money  
advanced by the original holder for

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was given to settle stock jobbing differences.—**GREENLAND v. DYER** (1828), Dan. & Ll. 147; 2 Man. & Ry. K. B. 422; 6 L. J. O. S. K. B. 345.

**953. value.]**—In an action by indorsee against drawer of a bill of exchange, it is no defence that the bill was drawn & accepted upon an illegal stock jobbing transaction, if the indorsee received the bill from a third person for valuable consideration & without notice of the circumstances in which it was given.—**DAY v. STUART** (1829), 6 Bing. 109; 3 Moo. & P. 334; 7 L. J. O. S. C. P. 249; 130 E. R. 1221.

**954. Gambling transactions on Stock Exchange.]**—Pltf. brought an action to recover the amount due on two promissory notes given by deft. to B. in respect of certain gambling transactions on the Stock Exchange, & indorsed over by B. to pltf. for valuable consideration:—**Held:** pltf.'s right to recover was not affected by the fact that he had notice of the notes having been given by deft. to B. in respect of gambling transactions, the consideration for the notes not being illegal, but falling only within the category of void contracts under Gaming Act, 1845 (c. 109).—**LILLEY v. RANKIN, RANKIN v. LILLEY & BAIRD** (1886), 56 L. J. Q. B. 218; 55 L. T. 814; 3 T. L. R. 223.

**955. Forged engraving plates—Indorsee without notice.]**—Where the consideration of a note was for payment for engraving plates upon which assignats were to be forged, if the party did not know that they were made with a fraudulent intention, & supposed them to be issued by the authority of government, he may recover on such note.—**STRONGITHARM v. LUKYN** (1795), 1 Esp. 389, N. P.

**956. Smuggling—Note indorsed to first indorsee before becoming due—Indorsed to second indorsee after becoming due.]**—In an action by the second indorsee against the acceptor of a bill of exchange, if the person who indorsed it to pltf. could himself have maintained an action upon it, deft. cannot give in evidence that it was accepted for a debt contracted in smuggling, although it was indorsed to pltf. after it had become due.—**CHALMERS v. LANION** (1808), 1 Camp. 383, N. P.

**Annotations:** — **Reid.** Stein v. Yglesias (1835), 1 Gale, 98; Fairclough v. Pavia (1854), 9 Exch. 690.

Overdue bills generally, see Part XI., Sect. 6, *post*.

**957. Importation of prohibited goods—Bill for good consideration—Indorsed for bad consideration.]**—If the importation of certain goods be prohibited, & pltf. sell such goods in England to A., who indorses a bill of exchange to him in payment, pltf. cannot recover on that bill against the acceptor, although there was no evidence that pltf. was the importer of the prohibited goods.—**v. HAYDEN** (1826), 2 C. & P. 472.

(1883),

—**DORAIN**  
L. O. S.

for value.]—**Held:** under 12 Geo. 2, c. 28, securities given for the price of lottery tickets are not void in the hands of a bonâ fide holder for value.—**v. MORLEY** (1862), 30 U. C. R. 21 U. C. R. 547.—CAN.

on  
**Exchange—Holder in due course.]**—A person who gives his cheque to a stock speculator for the purpose of making exorbitant profits, cannot refuse to pay such cheque to a holder in due course.—**GARAND v. WEST** R. L. N. S. 160; Q. R. 40 S. C. CAN.

(1893), Q. R.



**958. Gaming—Indorsee for value.]—**To an action by indorsee against acceptor of a bill of exchange, deft. pleaded that it was accepted for a gaming debt, & that pltf., before the indorsement to him, had notice thereof. Replication, *de injuria*:—*Held*: good on special demurrer.

Pltf., being a holder for value, is *prima facie* entitled to recover upon the bill, even where there has been illegality between the original parties to it (LORD ABINGER, C.B.).—HUMPHREYS v. O'CONNELL (1841), 7 M. & W. 370; 9 Dowl. 213; 10 L. J. Ex. 139; 151 E. R. 809; *sub nom.* HUMFREYS v. O'CONNELL, 5 Jur. 271.

*Annotations*:—Apld. Scott v. Chappelow (1842), 4 Man. & G. 336. *Refd.* Cowper v. Garbett (1844), 13 M. & W. 33; Herbert v. Sayer (1844), 5 Q. B. 965; Buttligieg v. Booker (1850), 9 C. B. 689. *Mentd.* Bennett v. Bull (1847), 1 Exch. 593.

**959. Betting—Presumption that indorsement without value.]—**Action on a promissory note at 2 months after date by indorsee against maker. Plea, that deft. made the note & delivered it to the indorser in payment of a bet on the amount of hop duty, & that pltf. took it when overdue & without value. On the trial, it was proved that the note was made & given for the bet to the indorser in Jan. 1855, it bore date Jan. 1, 1854, but across it, at the time it was delivered by the maker, was written "Due Mar. 4, 1855." In fact the date of 1854 was a mistake for 1855, not noticed by any one. It was indorsed to pltf. in Jan. 1855. The Judge reserved leave to enter a verdict for deft. if the note was overdue. He left it to the jury to say whether there was value for the indorsement, telling them that the burden lay on deft. to prove that there was none:—*Held*: there was no misdirection; for, though proof that a negotiable instrument was affected with fraud or illegality in the hands of a previous holder raised a presumption that he would indorse it away to an agent without value, & called on pltf. for proof that he gave value, the presumption did not arise when the previous holder merely held without consideration, & a bet, though void & no consideration, was not illegal so as to raise a presumption that the indorsement was without value.—FITCH v. JONES (1855), 5 E. & B. 238; 24 L. J. Q. B. 293; 25 L. T. O. S. 160; 1 Jur. N. S. 354; 3 W. R. 507; 3 C. L. R. 1226; 119 E. R. 470.

*Innotations*:—*Fold.* Lilley v. Rankin, Rankin v. Lilley & Baird (1886), 56 L. J. Q. B. 248. *Refd.* Beeston v. Beeston (1875), 1 Ex. D. 13; Bridger v. Savage (1885), 15 Q. B. D. 363. *Mentd.* Hall v. Featherstone (1858), 3 H. & N. 284;

**958 i. Gaming—Indorsee for value.]—**borrowed from S. \$20 wherewith to play cards & gave him his cheque therefor. S. transferred this cheque to C., who knew the circumstances. Afterwards C. indorsed the cheque to pltf., who presented it for payment to the bank, where there were no funds:—*Held*: a third party holder in good faith of a cheque, given in payment of gaming debt, can recover thereon.—HON. v. LACHANCE (1898), Q. R. 14 L. C. 77.—CAN.

—ii. S. P. LAURENCE v. HEARN (1888), 21 N. S. R. 375.—CAN.

—.)—A promissory note, though given as security for money won by gaming, is not void, but is enforceable against the maker by a holder in good faith for value without notice.—FISH & PACKER v. (1910), 12 C. L. R. 39.—

a. Betting—Indorsee without notice

Thacker v. Hardy (1878), 4 Q. B. D. 685; Road v. Anderson (1882), 10 Q. B. D. 100; Galland v. Hall (1888), 4 T. L. R. 761.

**960. — On horse races—Indorsee for value with notice.]—**Where a cheque was given by deft. in payment of bets upon horse races lost by him, & indorsed by the payee to pltf. for value, with notice of the consideration for which it was given:—*Held*: pltf. could not maintain an action upon the cheque, as it must be deemed by virtue of Gaming Act, 1835 (c. 41), to have been given for an illegal consideration.—WOOLF v. HAMILTON, [1898] 2 Q. B. 337; 67 L. J. Q. B. 917; 70 L. T. 49; 47 W. R. 70; 14 T. L. R. 400; 42 Sol. Jo. 633, C. A.

*Annotation*:—*Refd.* Hyams v. Stuart King, [1908] 2 K. B. 696.

**961. Stifling prosecution — Indorsee without notice.]—**To a count on a promissory note made by deft., payable to the order of A. & indorsed by A. to B. & by B. to pltf., deft. pleaded that the consideration for the note was the forbearance to prosecute deft.'s son upon a charge of felony, not averring that a felony had been committed, or affecting A., the payee, with notice of the alleged illegality of the consideration:—*Held*: bad.—MASTERS v. IMBERSON (1819), 8 C. B. 100; 18 L. J. C. P. 348; 137 E. R. 446.

**962. — Bill for good consideration—Indorsed for bad consideration.]—***Semle*: in an action by an indorsee of a bill of exchange against an acceptor for valuable consideration, it is no defence that the bill was indorsed by the drawer to pltf. in order to stifle a prosecution for felony. FLOWER v. SADLER (1882), 10 Q. B. D. 572, C. A.

*Annotations*:—*Consd.* Jones v. Merionethshire Permanent Benefit Bldg. Soc., [1891] 2 Ch. 587. *Mentd.* Haywood v. Whitaker (1887), 3 T. L. R. 637; McClatchie v. Haslam (1890), 63 L. T. 376; Barnes v. Richards (1902), 71 L. J. K. B. 341.

**963. Fraudulent preference—Bill for good consideration—Indorsed for bad consideration.]—**An agreement was made between deft. & pltf. & others, creditors of deft., that deft. should pay, & that pltf. & the other creditors should accept, the amount of their debts by certain instalments secured by deft.'s notes, & it was at the same time, without the knowledge or consent of other creditors, agreed between pltf. & deft., that deft. should indorse to pltf. a bill, accepted by a third party, in order to give pltf. a fraudulent preference, & induce him to become party to the composition.

up.—BOWING v. HOME BANK OF CANADA (1907), 9 O. W. R. 938.—CAN.

c. Stifling prosecution—Indorsee with notice.]—A promissory note given for the stifling of a criminal prosecution was indorsed with knowledge of the illegal consideration:—*Held*: the indorsee was not a holder in due course.—UNITED STATES FIDELITY & GUARANTEE CO. v. CRICKSHANK & SIMMONS, [1919] 3 W. W. R. 821.—CAN.

d. Fraudulent preference—Holder for value.]—Notes were given by insolvents, a few days before the insolvency, to secure parties to whom they were indebted on accommodation paper; these notes were transferred & the transferees claimed to rank on the estate of the insolvents for their value:—*Held*: such notes were null & void ab initio even in the hands of an innocent holder for value before maturity.—Re DAVIS, MUIR v. CHAM- (1869), 13 L. C. J. 184.—CAN.

—& for value—Overdue

Where a cheque is given in payment of a wager which is void only & not illegal, a holder who took the cheque for value & without notice may sue the maker upon it notwithstanding that he knew when he took it that it had been dishonoured & was a stale cheque.—POLLOCK v. PATTERSON & Co. 19 N. Z. L. R. 94.—N.Z.

crime.

notice—Order to return notes to deft. sued deft. for the return of certain promissory notes. Pltf.'s brother had forged his name to a promissory note, of which a customer of deft. bank became the holder. It was arranged that pltf. should give the notes he now sued for, to cover the forged note. The manager had stated that "it was a serious matter & would have to be straightened up":—*Held*: the notes were given for an illegal con- & were ordered to be

# 148 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 6. Legitimacy of consideration: Sub-sect. 2, B.; sub-sect. 3, A. & B.* SUB-SECT. 3.—EFFECT OF AVOIDANCE OF INSTRUMENT BY STATUTE.

The notes being given & the bill indorsed by deft. in pursuance of the agreement:—*Held*: plff. could not sue deft. even on the notes given for the instalments, although plff. had not enforced or received payment of the acceptance when due. *HOWDEN v. HAIGH* (1840), 11 Ad. & El. 1033; 3 Per. & Day. 661; 9 L. J. Q. B. 198; 4 Jur. 821; 113 E. R. 700.

*Annotations: Held. Bradshaw v. Bradshaw* (1841), 9 M. & W. 29; *Pondlebury v. Walker* (1841), 4 Y. & C. Ex. 471; *Higgins v. Pitt* (1849), 4 Exch. 312; *Mallison v. Hodgson* (1851), 16 Q. B. 889; *Mayhew v. Boyce* (1910), 103 L. T. 1. *Mentd. Davidson v. McGregor* (1841), 8 M. & W. 750.

**964. Transaction in breach of Companies Act, 1862 (c. 39) indorses in no better position than payee Payee being illegal loan society.** T. was the president of a loan society. The objects of the society were to form a fund, from which money might be advanced to enable shareholders to build or purchase a dwelling house or other buildings, or to lend money to each other on approved personal security; 5 per cent. interest was to be charged on all money advanced by the society. The society consisted of more than twenty members, & was not registered under any Act. The society advanced a sum of money to deft., who signed promissory notes by way of security for the loan, & when T. went out of office, he indorsed the promissory notes to plff., who succeeded him. Plff. having sued upon the notes for the benefit of the society:—*Held*: the society was rendered illegal by s. 1 of the above Act, & plff. could not be in a better position than the society, & could not recover upon the promissory notes.

The action is on promissory notes, of which plff. is indorsee, but he sues as trustee for the society which seeks to do through him that which it cannot otherwise do (*LINDLEY, L.J.*). *SHAW v. BENSON* (1863), 11 Q. B. D. 503; 32 L. J. Q. B. 575; 40 L. T. 651, C. A.

*Annotations: Mentd. Morris v. Thompson* (1862), 36 L. T. 120; *Phillips v. Davies* (1864), 3 T. L. R. 96.

**a. Holder in due course.** A note given to a creditor as condition of his consent to sign a composition deed cannot be set off against one who has his title to the note from a holder in due course of the fraud. — *HALLAM v. HAY* (1890), 61 R. 16 S. C. 321. — CAN.

**b. Agreement not to oppose creditor's discharge.** A bill of exchange given by a third party to a creditor, to induce him to forbear opposing an insolvent, was indorsed by the creditor for valuable consideration to plff., who had no notice whatever of the insolvency of B. who was no party to the bill, & was a bona fide holder. — *Held*: they could not recover against the acceptor. — *DOWD v. O'BRIEN* (1863), 15 Ir. Jur. 119 — IR.

**c. Transaction in breach of Foreign Companies Ordinance Act, s. 3.—(Indorses with notice.)**—Deft. made a promissory note in favour of A. Co., an unregistered co., who indorsed it to plff. A. Co. were prohibited under the above Act from doing business in the jurisdiction; plff. took the note with knowledge of the fact. — *Held*: plff. could not recover, the consideration was illegal & he was not a holder in due course. — *INSLAND v. ARNOLD* (1904), 9 Turr. L. R. 66. — CAN.

**d. Transaction in breach of Farm Implement Act, 1913.—(Holder in due course.)**—Note given on sale of farm machinery. The fact that the sale of a farm machine is invalid under Farm Implement Act, c. 35, 1913 (Ireland), does not prevent a holder in due course of a promissory note given on such sale from recovering thereon. — *EXTRA DIX v. DENNIS*, [1915] 1 W. W. R. 913; 11 Sack. L. R. 62. — CAN.

## PART X. SECT. 6, SUB-SECT. 2. —A.

**b. Transaction in breach of Land Act, 1924, s. 19.** A promissory note given as collateral security for a mortgage under the above act, is in effect part of the same transaction, & tainted with the illegality, so that an action cannot be maintained upon it. — *RAYN v. O'CALLAGHAN* (1927), 15 T. L. R. 911. — AUS.

**c. Note on Sunday.**—Under s. 4 of Act, c. 43, s. 2, a note made on Sunday in payment of goods sold on that day, is void, as between the original parties, but not as against an indorsee for value & without notice. — *CHAMBERLAIN v. O'BRIEN* (1833), 11 U. C. R. 63. — CAN.

## A. On Immediate Parties.

**965. Gaming—16 Car. 2, c. 7.**—A bill accepted for money won at play shall not be recovered against the acceptor. — *HUSSEY v. JACOB* (1690), Carth. 356; 1 Com. 4; Holt, K. B. 328; 1 Ld. Raym. 87; 5 Mod. Rep. 175; 12 Mod. Rep. 90; 1 Salk. 344; 88 E. R. 1180.

*Annotations:—Consd. Henderson v. Benson* (1820), 8 Price, 251. *Reid. Bowyer v. Bampton* (1741), 2 Stra. 1155. *Mentd. Hartop v. Hoare* (1743), 3 Atk. 44; *Jeffreys v. Walter* (1748), 1 Wils. 220; *Carr v. Hinchliff* (1825), 4 B. & C. 547.

## B. On Remote Parties.

**966. Gaming—16 Car. 2, c. 7.**—*Semle*: a bill accepted for money won at play is recoverable by an innocent indorsee for a valuable consideration. *HUSSEY v. JACOB* (1690), Carth. 356; 1 Com. 4; Holt, K. B. 328; 1 Ld. Raym. 87; 5 Mod. Rep. 175; 12 Mod. Rep. 90; 1 Salk. 344; 88 E. R. 1180.

*Annotations:—Consd. Henderson v. Benson* (1820), 8 Price, 251. *Reid. Bowyer v. Bampton* (1741), 2 Stra. 1155. *Mentd. Hartop v. Hoare* (1743), 3 Atk. 44; *Jeffreys v. Walter* (1748), 1 Wils. 220; *Carr v. Hinchliff* (1825), 4 B. & C. 547.

**967. —9 Anne, c. 19.**—The innocent indorsee of a gaming note can maintain no action against the drawer, but he may sue the indorser upon his indorsement. — *BOWYER v. BAMPTON* (1741), 2 Stra. 1155; *sub nom. BOWER v. BAMPTON*, 7 Mod. Rep. 331; 93 E. R. 1096.

*Annotations:—Reid. Henderson v. Benson* (1820), 8 Price, 251; *Edwards v. Dick* (1821), 4 B. & Ad. 22. *Mentd. Cuthbert v. Halsey* (1790), 8 Term Rep. 300; *Hodson v. Terrill* (1830), 2 L. J. Ex. 282; *Gowan v. Wright* (1886), 35 W. R. 297.

**968. —** In an action by indorsee against maker of a promissory note:—*Held*: deft. should not be allowed to go into evidence to show the original consideration of the note illegal, unless he could likewise show plff. a party to that illegality, except in the cases of gaming & usury,

**m. Shares in lottery.—Lottery Act, 1811.**—Deft. gave plff. notes as security for money in respect of shares in the "Securities Raffle". — *Held*: plff. could not recover. — *JOSSELYN v. BOLAND* (1872), 9 B. L. R. 411; 18 W. R. 474. — IND.

## PART X. SECT. 6, SUB-SECT. 3. —B.

**967 L. Gaming.—Bona fide holder.**—A cheque given in settlement of losses at matching coppers is a note of hand given in consideration of a gambling debt, & such security is void under 9 Anne, c. 19, even in the hands of a bona fide holder for value. — *ROSE v. WORTH* (1866), 12 O. R. 49. — CAN.

**967 H. S. P. BURN v. MARRIS** (1841), 1 Orl. Dig. 176. — CAN.

**967 M. —** Assessee on a note made by A. payable to B., indorsed by B. to C., & by C. to plff. A. pleaded that he gave the note to the payee as part of the consideration for the purchase of a lottery ticket, & averred that plff. became indorsee with full knowledge. — *Held*: both pleas bad. — *WALLINGTON v. BUCKLEY* (1836), 13 U. C. R. 204. — CAN.



where by the were  
be to all void.—NEWBY  
n., N. P.

969. ———. ———. Although the  
of a bill of exchange in its creation may  
been illegal, yet that does not entitle the  
except in cases of usury & gaming, to call upon a  
remote indorser to prove the consideration on  
which he had it, unless he can be impeached in  
the original transaction, & be proved to have  
privity to it.—WYATT v. BULMER  
538, N. P.

—DMD. Simpson v. Clarke (1833), 3 Tyr.  
Mills v. Barber (1836), M. & W.

970. ———. ———. A bill of exchange was drawn  
by a person who was an entire stranger to the  
acceptor & to the person for whose benefit it was  
afterwards accepted. It was made payable to  
the drawer, & was, after being indorsed generally  
by him, delivered over before acceptance, to the  
person who had prevailed on him to draw it, &  
by that person giving to the party for whose  
benefit it was ultimately accepted. It was after-  
wards accepted by the drawee, & delivered by him  
to a person to whom the acceptor had lent money  
at play, & for that consideration. It then got into  
the hands of other persons who were  
trade & was by them indorsed & paid over to ptfs.

Held: to be within s. 1 of the above Act, the Act  
included acceptances of bills drawn without  
consideration, & ptfs. could not  
the acceptor.—HEXTER  
Price, 281; 148

971. ———. ———. action against the  
drawer of a bill, it is no defence that the bill was  
accepted for a gaming debt, if it be indorsed over  
by the drawee for a valuable consideration, to a  
third person, by whom the action is brought.  
—HOWARDS v. DICK (1821), 4 B. & Ald. 212;  
E. R. 915.

Annotations:—*Reid*.  
Re Riddale, Ex p. Marson (1838), 3 Deac. 79;  
v. Hampden (1858), 21 L. J. C. P. 286. *Mepti*  
v. Burnham (1852), 8 Exch. 173; Gowan v. Wright (1853), 33 W. R. 297.

Bill in renewal or substitution.]  
No. 827.

972. Betting on horse race—16 Car. 2, c. 7.—  
A bill of exchange for £185, drawn for a bet on  
the St. Leger stakes:—Held: invalid in the hands  
of a bond fide third indorsee, who took it for full  
valuable consideration without notice.—SHILLITO  
v. THEED (1831), 7 Bing. 405; 5 Moo. & P. 303;  
9 L. J. O. S. C. P. 135; 131 E. R. 156.

L. J. v. K. B. 346.

Usury—13 Anne, c. 18.—A bill of ex-  
change given for usurious consideration is  
even in the hands of an indorsee for  
valuable consideration, without notice of the usury.—LOWE v.  
B. 470.

973. ———. ———. for

to A., upon an

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without notice.

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consideration given at the

note in  
k not

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974. ———. ———. de.

No.

975.

for bad consideration. consideration—  
has been given for a bill of  
usury in any of the intermediate  
not avoid it in the hands of a  
indorsee, in an action against the accep-  
t. CARTONY (1795), 1 Esp. 274, N. P.  
v. Black (1819), 2 B.

976.

A bill of  
to A. or order, which was in  
inception, was by him indorsed to B. for an  
usurious consideration, who passed it to a third  
person for a valuable consideration, without  
of the usury, by whom it was paid to B.  
after his bkpey., in satisfaction of a  
bkpt.'s estate:—Held: the bill  
B. on an usurious account did not  
in the hands of an innocent  
the above Act, &  
rights of  
the bill A., though as  
was  
1 East, 92; 102 E. R. 37.

977. ———. ———. de.

v. Black (1819), 2 B. Ald.  
Holt (1874), L. R. 7

978. ———. ———. WYATT

978. ———. ———. If a bill of exchange is drawn  
an agreement of  
to it & a not a party to it, that the  
latter shall get it  
likewise not a party to the bill upon usurious  
& it is so discounted, the bill is void for  
in the hands of an innocent indorsee.—  
v. WRIGHT (1807), 1 Camp. 139, N. P.

K. B.  
216.

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), 2 & Kir

bill of exchange tainted by usury applied to  
drawer to discount other bills for them, to  
them to take it up, & he agreed to get them  
counted by another person on receiving for  
10 per cent. beyond the legal interest, & bills  
accepted by them, which he  
suant to the terms of the

was liable to a penalty for taking excessive  
v. WIGLEY (1809), 11  
East, 43; 2 Camp. 33; 103 E. R. 919.

—A bill of  
the hands of a bond fide indorsee, if it was drawn in  
an  
it, the drawer, to

BYAN v. S. 5, 8  
3 U. C. R.

# 150 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

it . 7. f  
 it c. privy to the  
 (1811), 2 Camp.  
 (1872).

981 A. being to plff.  
 & in a  
 on  
 plff. advancing him £150 on a bill for £100, £100.  
 I him do the whole balance due from A.  
 & £50 for the whole balance due from A.  
 to plff. & were tainted by the  
 could not be  
 r, to the exte of  
 HARRISON v.  
 HANVEL, 11 5 Taunt. 1 Marsh. 349; 128  
 E. R. 899.  
 B. to get a  
 him a sum of  
 B. pro C.  
 B. to bill,  
 upon  
 A.  
 A. had to  
 A  
 B  
 P  
 983. The bill of  
 up contract  
 of the contract Held: a bond  
 not upon it  
 LAWES v. MAZZARINO  
 1 R. & Ald.  
 291.  
 Bill in renewal or substitution.  
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## WHAT CONSTITUTES FAILURE OF CONSIDERATION.

What amounts to—Consideration for

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X. SECT. 7.

984 L

a distant day.—GRANT v. WELCHMAN (1812),  
 East, 207; 104 E. R. 1067.

Distd. Solly v. Hinde (1834), 2 Cr. & M. 516.  
 v. Nix (1824), 9 Moore, C. P. 159; Westlake v.  
 (1858), 5 C. B. N. S. 248. Mentd. R. v. Barmston  
 (1838), 1 Ad. & El. 858.

985. ——— Apprentice leaving.]—In an  
 action by indorsee against acceptor of a bill of  
 exchange, the latter proved that his son had been  
 bound apprentice to the drawer in 1827 by in-  
 denture, & that a premium of £30 was agreed to  
 be paid, for which the bill was given. The in-  
 denture had a £1 stamp impressed upon it. The  
 apprentice served his master for 5 months, & a  
 difference arising between the master & father,  
 & it having been discovered that the stamp was  
 insufficient, the apprentice left his master's  
 service:—Held: as the apprentice was maintained  
 & instructed by his master for 5 months, & might  
 have compelled him to continue that maintenance  
 & instruction, by causing the indenture to be  
 properly stamped, pursuant to statute, there was  
 not a total failure of consideration for the bill,  
 & the circumstances would not be an answer to  
 an action by the payee against the acceptor.—  
 MANS v. LENT (1830), 10 B. & C. 877; L. & Welsh.  
 320; 5 Man. & Ry. K. B. 660; 8 L. J. O. S. K. B.  
 E. R. 671.

Ridd. Westlake v. Adams (1858), 5 C. B. N. S.  
 Hemiker v. Hemiker (1852), 1 E. & B. 54.

Price of goods sold - Seller retaking  
 Where a bill of exchange is given in  
 payment they

in the possession of the buyer, the seller  
 y retakes them, this does not work an  
 failure of consideration for the bill, so as to  
 a defence by the acceptor (the  
 by the drawer (the seller) upon the bill.  
 of the buyer for the ret.  
 be sought by action against the seller.  
 v. WILKINSON (1831), 2 B. & Ad. 320;  
 O. S. K. B. 231; 109 E. R. 1102.

Price of land - Conveyance not  
 promissory note, payable on a  
 given day, is made at the same time with an  
 agreement for the sale & conveyance of an estate,  
 of the consideration for which the sum secured by  
 is a part, the maker of the note is bound to  
 amount at the given day, although the  
 not been conveyed, provided the con-

L. K. B. 221;

109 E. R. 1101

988. ———  
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 of R.,  
 A

Question for  
 A., was put  
 , who laid it

P.

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for

1 R. & C. 71



pltf. \$43 in part of the \$63, & the bill of exchange, on account of the residue of the \$63, that pltf. did not perform his but to perform some & performed in an unworkmanlike manner other work, necessary to be done under the agreement, & that the \$43 was more than the whole work done was worth:—*Held*: bad, as disclosing, not a failure of consideration for the bill, but only a partial failure of the consideration, to which money payment & the bill were alike applicable. — *TRICKEY v. LARNE* (1840), 6 M. & W. 278; 9 L. J. Ex. 141; 151 E. R. 414.

989. ——— Bill for rent in advance—Assignment of reversion as to part. — In debt by the drawer & payee of a bill of exchange for £25 10s. 3d., drawn in Nov. " for value received to Michaelmas last." deft. pleaded that before the acceptance, he held a message, etc., as tenant to plff., at a certain rent, & that the bill was drawn & accepted in payment by anticipation, amongst other considerations, of £12 10s., part of the rent not then due, & that the drawing & acceptance of the bill, plff. sent the message to J., of which deft. had no notice until after such drawing & acceptance; that after the bill became due, & before the notice of the assignment of the suit, J. ———

991. ——— Bills discounted—Signatures forged.)  
 —Pltfs. & defts. were both money-dealers & bill  
 brokers in London. A. was a customer of defts.  
 N. & Co. were a firm of high repute in London.  
 A. brought to defts. for discount an  
 of N. It to pltfs. for  
 but re indorse or  
 bill. Pltfs. to take it at the ordinary  
 of on the credit of N. & C  
 , their cheque for

990. ——— Price of work to be done—Work not done.)—Action by drawer against acceptor of a bill of exchange for £20 8s. 6d. Pleas, that the drawing & acceptance of the bill, it was between plff. & deft. that plff. should do carpenter's work for deft. for £63, that deft. paid

against  
 deft.  
 pliff.

a bill of 371.—CAN.  
 an estate of  
 agent for

to  
 the

T. Bank  
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 J.

to  
 by  
 the bank, for £17,4  
 was afterwards renewed by  
 by the bill now used on. &  
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 C. L. R.

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 U. C. R. D.  
 & goods—Failure to

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 in which case there

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 v. WARD (1907), 7 W. L. R.  
 Work  
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Sect. 7. What constitutes failure of consideration.]

who would take the bill, without recourse to the bill broker. In such cases, the customer was never introduced to the capitalist, but the capitalist gave his cheque to the bill broker for the amount of the bill less the discount agreed on between the bill broker & capitalist, & the bill broker gave his cheque to the customer for the amount of the bill discount on the bill broker not

the jury that, on un-  
disputed facts, though there was no indorsement or guarantee & no warranty of the solvency of the bill, failure of consideration, & plffs. were entitled to recover back y paid for the bill from the party with the transaction & he left it to the jury ion was one between n plffs & A. through

trial: He (1  
that there was a al failure of u-  
tion dication for to  
by  
1. 1 E. & R. 133; 21 L. J. Q. B. 40; 24  
O. S. 71; 1 Jur. N. S. 328; 3 C. L. R. 3;  
E

Held, Proder & Brown (1882), 11 C. B. N  
High Avenue &  
R. P. Canada &  
R. P. Mail Co. R. Y. P. 677;  
L. R. B. 580.

Money to be advanced Part only  
To a declaration on a promissory note  
deft. pleaded an  
to advance money  
for purpose taking to  
third u  
of of

of costs  
& had paid it away in  
incurred for the object  
that the had  
out by

11 C. L. R. 3;  
CAN.

in

O. W. R. 11 C. W. N.  
11 C. R.

ad

the

to

in

the other. In this  
out  
bill

improved  
refused.  
Held: U

of consideration & issued CAN.

to advance further money:—Held: the plea was no answer, as it did not show an entire failure of consideration, & the agreement appears to contemplate the giving of the note expressly as a security to be enforced in the ordinary way, if necessary.—WILLIAMS v. SALSMAN (1855), 24 L. T. O. S. 256.

993. — Goods sold—Not up to sample—  
Drawer liable for money paid.]—Deft. having sold to T., through the agency of plffs., factors, some bark, which he agreed should be equal to — drew a bill on plffs. for the price of the bark, which they accepted. The bark not being equal to & being rejected by T.:—Held: the ration of the bill having failed, plffs. were d to recover the amount of it from deft. HOOPER v. TREFFRY (1847), 1 Exch. 17; 10 L. J. Ex. 233; 9 L. T. O. S. 200; 154 E. R. 8.

994. — Failure to deliver.]—Action for wrongfully indorsing a bill of exchange drawn & indorsed by plff. after the consideration thereof had wholly failed, whereby plff. was forced to pay same. H., acting as agent for N., in London, bargained with deft., at Hartlepool, for a cargo of coals, to be supplied to N., payment to be in cash, less discount, in exchange for documents. The coals were shipped, & the shipping documents sent to deft.'s agent in London. N. being unprovided with money, H. agreed with plff. that a bill at 14 days should be drawn by plff. on N., & indorsed by plff. to H. The bill was drawn & indorsed on Mar. 26, & was indorsed by H. to deft., & by him indorsed to his bankers, who gave him credit for the amount, & again indorsed it. Deft., on receipt of the bill, caused inquiries to be made as to the parties to the bill, & the result not being satisfactory, the shipping documents, were not on Mar. 29, N. repudiated the contract. On Apr. 1, H. offered the coals to N., but he refused to accept them. Plff. was afterwards compelled to pay the bill to indorsee for value:—Held: deft. having agreed to accept the bill in payment for the coals, there was a good

15 U. C. R. 313.—CAN.

Plff.

note

a warranty of

of change in them there was  
of warranty:

W 15.—CAN.

993

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the deft  
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admitted that the  
note of goods  
U. C. R. 143



consideration for tance & indorsement of the bill, & the delay in the delivery of the coals to pltf., although it might give pltf. a cause of action against deft., did not amount to a total failure of consideration, nor entitle him to the contract in pursuance of which it was given.

*Donald* (1863), 2 New Rep. 516; 12 W. R. 9; *affd.* (1864), 12 W. R. 831, Ex. Ch.

### Hire

a ship to K. at a certain rate per to be paid every four weeks in advance. On the second payment becoming due, K. received from pltf., through whom he had sub-chartered the ship to B., a cheque for half the amount due, payable

the order of deft., upon the terms that K. should inform deft. that the advance was in con-

that the ship should be allowed to perform the charter. K. paid the to deft., but omitted to inform him of the terms on which it had been given, & he had no notice of them, & the remainder of the money being unpaid, deft., who had obtained cash for the cheque, stopped the ship:—*Held*: an action for money had & received to recover the amount of the cheque was not maintainable by pltf. against deft., as there was no privity between them, & the action, if any, ought to have been brought by K.

It is said the consideration for the cheque failed; that, on default of payment of the hire agreed on,

to a suit upon a that the  
was given for part of  
which only has been setting up  
the order useless, is a want of consideration. — *GRAHAM & BROADBENT* (1914), Q. R. 47

I. sold & deliv machinery in  
def., by the contract of  
in  
until paid for. The  
was destroyed by  
were paid. In an action on the notes:  
— *Held*: deft. had possession & use of  
the machinery & an interest in it, there  
was not a total failure of consideration  
for the note nor any sustained partial  
failure. *GOLDIE & McCULLOCH CO. LTD. v. HANFORD* (1907), 31 O. R. 281; —  
CAN.

g. — Composition arrangement.  
Failed to carry out. A. & Co. was  
executed against the property of B.,  
at the instance of A.; while the  
winding from the  
sheriff, it was agreed that A. should  
relinquish the fruits of  
& should receive a composition on the  
amount his claim. It was also  
agreed that A. might have the use of  
his note for the amount to  
C., trustee for creditors. A., on  
the day  
with C.'s solr., receiving from him  
part  
all of B. No  
or assented to A.,  
further  
in the  
SMITH v. McEVOT  
1 Ir. Jur.

— *Sw*  
A breach of  
failure of the  
v. HAMMAY  
23 N. Z. L. R. 134.

Premium for insurance (y.)  
in  
If:

issued hereunder will to be  
without any  
of the on., but

to  
in  
for  
was by  
the time

for five  
months. In an action on note:—  
*Held*: the  
HOMER  
& N. S.

1. Applt. made of to  
& sign  
for the first half-yearly premium, for  
a policy, & posted it to the  
him, by him; it  
of

their part of the ; & as, not  
of the

tion had not  
r (1907), E. D. C. — E. AF.

m. on  
pltf.  
which

def.'s  
the  
that pltf. possessed  
pltf.  
PHILLIPS v. HANFORD, 12 L. C. R. 409. — CAN.

Pltf.

A bill of  
of sale was prior to  
stopped in &  
pltf.  
of the  
aid:—  
of

not  
v. HERRICK  
E. L. R.

in  
M. on  
July 1914.

in respect of  
which deft. accepted on  
19.  
good  
the time

the amount on the bill with  
of Nov. 10. was

at  
1. L. R. 42 Bom. 473. — IND.

p.  
in L. & R. &  
ab in 24.  
a in H.  
at  
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shipping  
goods, &

H. Just  
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bill in for  
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On Dec 12, 1914 Pro-

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sent.

The evidence of deft. & it is

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**Sect. 7. What constitutes failure of consideration.**  
**Sect. 8; sub-sect. 1.]**

deft. had no right both to stop the ship & also receive the money paid to him in respect of that default. This is questionable (FRILE, C.J.).—**WATSON v. HUSKELL** (1861), 5 B. & S. 908; 34 L. J. Q. B. 93; 11 L. T. 641; 13 W. R. 231; 122 E. R. 1090, Ex. Ch.

**Annotations.**—**Conad.** *Currie v. Misa* (1875), L. R. 10 Exch. 133; *Talbot v. Von Berta*, [1911] 1 K. B. 854.

**Effect of.—As defence to action.]—See Sect. 8, sub-sect. 2, post.**

**On burden of proof of consideration.]—See Sect. 10, sub-sect. 2, post.**

## SECT. 8. ABSENCE OR FAILURE OF CONSIDERATION AS DEFENCE TO ACTION ON INSTRUMENT.

### SUB-SECT. 1. ABSENCE OF CONSIDERATION.

**996. Whether question for jury.** In an action of *indebitatus assumpsit* it may be left to the jury

**1.** *Purchase of interest in partnership.*—*Impress* (a partner from partnership) gave a promissory note in purchase of an interest in a partnership with the partner. He was expelled from the partnership. There was no provision in the partnership agreement for its determination & the method adopted by the partner was inapplicable to a partnership. *Held*, there was no failure of consideration. **MEACHAM v. HANKS** (1917), 21 O. W. R. 740, 10 W. N. 1014. CAN.

**2.** *Advance of amount of insurance.*—*Pltfs.*, an insurance co., refused payment of a partial loss to the assured in a marine policy, in consequence of the claims of W., to whom the amount of insurance was in case of loss made payable, but consented to advance the amount, upon assured giving their promissory note indorsed by deft. for the sum, which was to be paid at maturity unless they procured the assent of W. to their retaining the money, which assent was refused. *Held*, deft. was liable on the note, & could not defend himself on the ground of want of consideration. **NEW BRISBANK ASSURANCE CO. v. ANGLY** (1843), 7 Ex. 196. CAN.

**3.** *Agreement to pay debts.]—*In an action by the indorser of a promissory note, made by deft. & indorsed by payee to pltf., the note had been made by deft. to payee with the intent that they should negotiate it for the purpose of paying certain debts. *Held*, so far as deft. was acquitted as to those there was no failure of consideration but so far as deft. could not be shown to have been acquitted there was no consideration. **REAVIS v. JAMES** (1830), 8 L. C. R. 329. CAN.

**4.** *Agreement to pay for goods.*—*Two undertakers to enforce.]—*In an action by drawer of two accommodation drafts against the drawer for the amount of the drafts paid to the holder thereof, the drawer alleged that an agreement had been made between pltf. & himself whereby pltf. was to have the use of deft.'s motor car in consideration of pltf. paying subsequently for a new motor car for deft. & that the drafts in question were accepted by pltf. in payment of his undertaking to pay for the new car. *Held*, the agreement was too uncertain to be enforced. At most there was a mere expression by pltf. of an

intention to do a gratuitous kindness. **CARRUTHERS v. WILLIAMS** (1914), 28 W. L. R. 236. CAN.

**5.** *Payment for water illegally consumed.]—**Pltfs.* having appropriated unmetered water of defts. for several years & wishing to avoid being charged with stealing water agreed to pay for the amount of water consumed as computed by defts. & made payment by a number of cheques. Some of these cheques were paid but payment of the remainder was stopped, pltf. suing to recover them as well as part of the amount they had paid on the ground (inter alia) that the consideration had failed. *Held*, there was no failure of consideration. **BRANDON ELECTRIC LIGHT CO. v. BRANDON CITY** (1912), 20 W. L. R. 654; 2 W. W. R. 22. CAN.

### PART X. SECT. 8, SUB-SECT. 1.

**a. When defence may be pleaded.]—**After payment into court.—Payment of money into ct. generally, on a declaration containing a count on a promissory note & the common counts, does not prevent deft. from disputing the consideration of the note. **MCCANN v. RILEY** (1855), 2 All. 134. CAN.

**b. Defence not taken at trial.—New trial.]—**A note had been given by deft.'s father to pltf., out of affection & regard for pltf.'s mother. Dft. pleaded, *inter alia*, that there was no good or valuable consideration. On the trial, the defence of want of consideration was not urged, & the jury found for pltf. on the other two counts. *Held*, there must be a new trial, confining the inquiry to the question of consideration. **HARRIS v. READ** (1868), 1 N. S. R. 198. CAN.

**c. Judgment of execution.]—**Where the maker of a note was sued thereon, & instead of raising the defence at law, that the note had been given without consideration, gave as his plea, pleaded that pltf. in the action was not the holder of the note, & a verdict was rendered against deft. for the full amount thereof, for which execution against lands was issued out & placed in the sheriff's hands, whereupon deft. in the action filed a bill to restrain proceedings at law. A decree for want of equity was allowed. **LATON v. LATON** (1864), 11 Gr. 31. CAN.

**997. Immediate parties.—Form of plea.]—**A plea that deft. made the note to pltf. as a gratuity, & that deft. never

received any consideration therefor, is good. **BROMWICH v. LOYD** (1696), 2 Lut. App. 1582; 125 E. R. 870.

**Annotations.**—**Conad.** *Story v. Atkins* (1726), 2 Ld. Raym. 1427. What is said in *Bromwich v. Lloyd* must be understood of *indebitatus assumpsit* brought against the drawer, not against the acceptor, for an *indebitatus assumpsit* will not lie against the acceptor of a bill of exchange (per C.R.). *Reid.* *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337, Ex. Ch.

**997. Immediate parties.—Form of plea.]—**In an action on a promissory note by the executor of the payee against the maker, deft. pleaded that he made the note without any consideration. *Held*: bad. **STOUGHTON v. KILMOREY (EARL)** (1835), 2 Cr. M. & R. 72; 3 Dowl. 705; 1 Gale, 91; 5 Tyr. 568; 4 L. J. Ex. 138; 150 E. R. 31.

**Annotations.**—*Reid.* *Atkinson v. Davies* (1848), 11 M. & W. 236. *Mentd.* *Easton v. Pratchett* (1836), 1 Gale, 250; *Mills v. Oddy* (1835), 2 Cr. M. & R. 103.

**998.** *—A plea, to assumpsit by drawer against acceptor of a bill of exchange, "that deft. received no good or sufficient consideration from pltf. for accepting the bill," is bad*

received any consideration therefor, is good. **POULTON v. DOLMADE** (1819), 6 U. C. R. 277. CAN.

**997 ii. —.]—**In an action on a bill, drawn by deft., & indorsed by him to pltf.:—*Held*: a plea that deft. never was indebted to pltf. in the amount claimed should be set aside. **MEADE v. MORROW** (1855), 4 I. C. L. R. 284; 7 Ir. Jur. 126. IR.

**997 iii. —.]—***Consideration set out in declaration.]—*Where pltf. sets out the consideration on which deft.'s promise was made, a plea that there was never any consideration for the promise is bad. **BRADFORD v. O'BRIEN** (1849), 6 U. C. R. 417. CAN.

**997 iv. —.]—***Note payable to bearer.]—*To a declaration against maker of a note payable to bearer, & delivered by deft. to pltf., deft. pleaded that the note was made for the accommodation of A. & C.; that there never was any consideration or value for the payment of it by deft.; & that pltf. held the same without value or consideration. *Held*: bad. **MUM v. CAMERON** (1852), 10 U. C. R. 356. CAN.

**997 v. —.]—***Whether particular facts should be stated.]—*In an action on a note by payee against maker, a plea that there was never any value or consideration for the making the said note or paying the same, is bad; it should state the circumstances in which the note was given, & deny that there was any other consideration than alleged. **CHAMBERLAIN v. JENKINSON** (1875), 26 U. C. R. 451. CAN.

**997 vi. —.]—**A general plea of no consideration or no value, not stating the particular facts which show the want of consideration, is good in Nova Scotia. **CHURMAN v. JEFFRIES** (1864), 2 Old. 719. CAN.

**997 vii. —.]—**In a defence to an action on a dishonoured cheque the want of consideration alleged should be set forth on the pleadings. **MALONE v. MALONE** (1844), 18 L. T. 57. IR.

**997 viii. —.]—***Set-off against maker of indorser.]—*In an action against maker & indorser, a plea by all defts. that there was no consideration for the making of the note, nor for the respective indorsements, nor either of them, & that pltf. holds the note without any consideration or value, is bad. **HARRIS v. SALT** (1833), 3 C. P. 97. CAN.



on demurrer, though the plea be not specially demurred to for that defect.—*GRAHAM v. PITMAN* (1835), 3 Ad. & El. 521; 5 Nev. & M. K. B. 87; 4 L. J. K. B. 206; 111 E. R. 512.

*Annotation*:—*Reid*, *Trinder v. Smedley* (1835), 1 Har. & W. 309.

*See, also*, Nos. 1013, 1014, *post*.

#### 999. — Misrepresentation as to debt.

A plea to an action on a promissory note alleging "that the note was given without consideration," & stating "that it was obtained from deft. upon a representation by plff. that a sum of money was owing from deft. to plff. by virtue of an indenture, whereas no such sum was owing," is a good plea of no consideration, without alleging that the representation was made "fraudulently," or that it was a representation of a matter of fact.

Such a plea, with the addition of the word "fraudulently" in the statement of the misrepresentation, is sufficiently proved by a finding that the note was given upon the faith of an innocent misrepresentation of a matter of law by plff., & the word "fraudulently" may be rejected as surplusage.—*SOUTHALL v. RIGG*, *FORMAN v. WRIGHT* (1851), 11 C. B. 481; 20 L. J. C. P. 145; 15 Jur. 706; 138 E. R. 560.

*Annotations*:—*Consol.*, *Flockton v. Poake* (1864), 3 New Rep. 453. *Apld.*, *Edwards v. Chancellor* (1888), 52 J. P. 451. *Reid*, *Cook v. Wright* (1861), 1 R. & M. 359. *Mentd.*, *Belshaw v. Bush* (1851), 11 C. B. 191; *Anderson v. Thornton* (1852), 8 Erch. 425.

#### 1000. — Services to be rendered—Evidence.

Where in an action on a promissory note, in which the consideration was expressed to be "for commission due to plff. for business transacted for deft.," deft. pleaded that the real consideration for the note was services to be thereafter rendered by plff., which had never been performed, & plff. replied *de injuria*:—*Held*: evidence in support of the plea was admissible, & ought to have been received by the judge at the trial.

Where an action is brought on a promissory note by the payee against the maker, deft. may

*k.* — *Form of replication.* In an action by the payee against the maker of a note, deft. pleaded that the note was made for plff.'s accommodation without consideration:—*Held*: the replication need not show what the consideration was.—*GRAVELLY v. JONES* (1852), 8 U. C. R. 608.—CAN.

*l.* — *—*—The replication to a plea of accommodation & no consideration, traversed the consideration but not the accommodation:—*Held*: bad.—*GILMORE v. EDMONDS* (1846), 2 U. C. R. 419.—CAN.

*m.* *S. P. BROWN v. WHEELER* (1850), 6 U. C. R. 393. CAN.

*n.* *S. P. ALLEN v. SKRAD* (1853), 8 U. C. R. 117.—CAN.

*o.* — *Verbal agreement for sale of land—Note given for purchase-money—Maker in possession.*—The consideration of a promissory note was the purchase of land of which the maker took possession, though there was no written agreement for the sale of the land, & the consideration was not expressed on the face of the note:—*Held*: the maker could not set up the want of consideration as a defence.—*GRAY v. WHITMAN* (1847), 3 Thom. 167.—CAN.

*p.* — *Note given as security for alleged liability—Misrepresentation by plaintiff's attorney.*—Dft., upon the

representation of plff.'s attorney that he was still liable for a bill which he had signed as accommodation acceptor, deposited certain title-deeds as security for the payment thereof, & that afterwards, for the purpose of obtaining possession of the said title-deeds, he made & gave to plff. the promissory notes in the summons & plaint mentioned, & that, save as aforesaid, there never was any consideration for the deposit of the said title-deeds, or for the making of the said notes. Dft. liability on the original bill had been discharged by the holder giving time for payment:—*Held*: a good equitable defence.—*BURTON v. BROWN* (1867), 13 L. C. L. R. 291; 14 Ir. Jur. 163.—IR.

*q.* — *Note given as collateral security—For unpaid joint loan.*—Plff. lent money to deft. & R. jointly, R. becoming bkpl., deft. endeavoured to have plff. paid out of R.'s estate as far as possible, & plff. received from R. half the debt in cash & a note for the balance which was still unpaid. Plff. wanting money & wishing to recover as much as he could from deft. on account of the debt, took notes of deft. for the balance. In an action on these notes, deft. pleaded that they were made for the accommodation of plff. & that there was no consideration:—*Held*: deft.'s notes were given as collateral security for the unpaid balance & plff. could

show, either that there was no consideration for the note, or that the consideration has failed (*TINDAL, C.J.*).—*ABBOTT v. HENDRICKS* (1840), 1 Man. & G. 791; Drinkwater, 81; 2 Scott, N. R. 183; 10 L. J. C. P. 51; 4 Jur. 1113; 183 E. R. 551.

1001. — *Balance alleged due—No balance in fact due.*—To a count against the maker of a promissory note, payable on demand, deft. pleaded that there were certain accounts between plff. & deft., upon which plff. alleged that a balance was due to him, that thereupon deft., at the request of plff., & on the faith of such allegation, made & delivered to plff. the note for & on account of the alleged balance, that the note was made & delivered to plff. on the condition that he should not demand payment thereof unless it should appear that such balance was due, that, at the time of the making of the note, there was not any balance or sum of money whatever due from deft. to plff., nor was deft. then indebted to plff. in any sum of money whatever, & so deft. said, that, except as aforesaid, there never was any value or consideration whatever for the making of the note:—*Held*: the plea was a good plea of want of consideration.—*KEARNS v. DUFFELL* (1818), 6 C. B. 500; 6 Dow. & L. 357; 18 L. J. C. P. 28; 13 Jur. 153; 130 E. R. 1382.

*Annotation*:—*Mentd.*, *Young v. Austen* (1869), L. R. 4 C. P. 553.

1002. — *Alleged mistake—Void assignment supposed to be valid.*—A person who gives another a bill, payable at a future day, for the debt of a third person due to that other, cannot, in an action against him on the bill, set up want of consideration as a defence.

In an action by indorsees against drawers of a bill of exchange at 60 days' date, the ct. refused to allow defts. to put a plea upon the record, either on legal or equitable grounds, to the effect that the bill was drawn by defts. for a debt due to plffs. from another co., which had assigned to them its business & obligations on the supposition that

recovery.—*DAVIES v. FRIEDMAN* (1893), 2 O. W. R. 270. CAN.

*r.* — *Joint & several note of partners—To raise partnership funds—Substituted security by continuing partner after dissolution.*—In an action brought upon a promissory note deft. pleaded on equitable grounds that the note was a joint & several note of R. & deft., who were partners, & was given to plffs. for the purpose of being drawn against to raise funds for the partnership, & that neither before or at the time of the making of the note or after delivery to plffs. was any sum of money paid to R. & deft. or either of them, or to any one on their behalf by way of consideration, & the note was only a security for any sum of money which might be so drawn; that the partnership was subsequently dissolved & security taken by R. alone in substitution of the former security, & that plffs. undertook to cancel the note. Large advances had been made before the giving of the note upon the express undertaking that the note should be given as security, & large advances were made on the day the note was given:—*Held*: the plea disclosed a good equitable defence.—*TRY BANK v. LIND* (1880), 1 N. S. W. L. R. 159.—AUS.

*s.* — *Mistake—Premiums on void policy of insurance.*—Dft., believing himself to be the owner of the

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*Sect. A. — Absence or failure of consideration as defence to action on instrument: Sub-sect. 1.]*

such assignment was valid, but that such assignment was wholly illegal & void.—*HALPOUR v. SEA FIRE LIFE ASSURANCE CO.* (1857), 3 C. B. N. S. 300; 27 L. J. C. P. 17; 30 L. T. O. S. 122; 8 Jur. N. S. 1304; 6 W. R. 19; 110 E. R. 758.  
*Annotation:—*Conrad. Pope & Pearson v. Buenos Ayres New Gas Co., (1892), 5 T. L. R. 758.

**1003. Holder without value—Accommodation bill Party accommodated.]** In an action by indorser against acceptor of a bill of exchange, it is competent to the acceptor to show that the acceptance was for the accommodation of plaintiff, & that he has received no consideration from the drawer. *THOMPSON v. CHURLEY* (1836), 1 M. & W. 212; Tyr. & Gr. 452; 5 L. J. Ex. 111; 150 E. R. 111.

*Annotation:—*Conrad. Abbott v. Hendricks (1840), 4 Jur. 111.

**1004. Holder for value—No relief in equity.]**—A drawer of a bill of exchange, though given without consideration, shall not be relieved against a third person to whom it was assigned for an honest debt. *ANON.* (1097), 1 Com. 43; 2 Eq. Cas. Abr. 85; 12 E. R. 950.

**1005.** If a bill be payable to A. or bearer, it is like so much money paid to whomsoever the note is given, that let what accounts or

whole of certain property, half of which in fact belonged to his wife, insured it with plaintiff, & gave his note for the premium. In an action on the note, held, the policy being null & void & not binding on plaintiff, plaintiff could not recover on the note. *COOPER v. D. ASSURANCE CO. MUTUAL* (1896), 12 Q. B. 128; 232 E. R. 111.

**1003.1. Holder without value—Accommodation note—Indorsement to avoid set-off.]** In an action by an indorsee against the maker & the indorser of a promissory note the defence was that the indorser debt indorser to C, who knew that the indorser debt had received the consideration for which the note was indorsed & that when plaintiff acquired the note he knew that C was indebted to the indorser debt, but fraudulently entered into a plan with C to prevent the indorser debt from collecting the amount due from C, by obtaining C's indorsement to plaintiff, which indorsement was utterly void. An application having been made to strike out the defence as embarrassing:

*Held:* the plea was an answer to the action & should be struck out. *ALLEN v. McDERMOTT* (1893), 2 Terr. L. R. 219.—CAN.

**a. Note originally obtained by undue influence.]** A promissory note made by M., in favour of N., who obtained it by undue influence, was by N. indorsed to plaintiff. N. not being indebted to plaintiff at the time they obtained possession of the note, & there being no consideration moving from plaintiff to N. at that time, the note was pledged to plaintiff, not as security for a pre-existing debt, but to be applied upon payment to the creditor of N. There was no existing indebtedness by N. to plaintiff, whereas action was suspended which might be a consideration.—*Held:* plaintiff were not holders in due course, & M. was entitled, in an action against him upon the note, to raise the same defence as he would be entitled to raise if N. were suing on the note.—*MARK v. BARRING* (1891), 10 W. L. R. 194; 18 W. L. R. 194.—CAN.

**b. — Indorsement pour aval.]**—*PERRY v. RODDEN* (1873), 5 R. L. O. S. 177.—CAN.

**1006.1. Holder for value—Accommodation bill—Insolvency & discharge of indorser.]**—P. having given his accommodation acceptance to M., on its return gave it to M.'s wife with words which did not establish a separate use for the benefit of Mrs. M. M. voluntarily acquiesced in his estate & neither scheduled the acceptance nor handed it to his official assignee, & after the acceptance fell due, obtained his certificate, leaving the bill unpaid in the hands of M.'s wife. Subsequently M. being indebted to plaintiff & likely to come under further obligations indorsed the bill to them as security for the past or any future debt; M. then incurred a further debt to plaintiff. In a creditor's suit by plaintiff against P.—*Held:* the acceptance remained negotiable after as well as before it fell due, & it was well transferred for value to plaintiff. *LEWIS v. GRAY* (1862), 1 W. & W. 215.—AUS.

**c. — Bankruptcy of drawers—Bill not indorsed.]**—In an action for the amount of a bill of exchange by the transferee for value against the acceptor, defendant pleaded that as the bill was an accommodation bill the pursuer had no higher right against him than the drawers of the bill who had given no value for it. The bill though held by the pursuer for value had not been indorsed on transference by the drawers, who had since become bankrupt.—*Held:* defendant was liable. *HODGKIN v. STEWART* (1899), 27 No. L. R. 337.—SCOT.

**d. — Note given to unauthorized agent—No authority to bind principal.]**—Defia, who were concerned in the organization of plaintiff, co., after the passage of the act of incorporation but before the organization of the co., gave a promissory note covering the price of shares to T., who pretended to be acting as trustee for the co., & who subsequently indorsed the note to the co. T. had no authority to act for the co., & was not in a position to bind the co. to give defia shares.—*Held:* the

conditions soever be between the party who gives the note & A., to whom it is given, yet it shall never affect the bearer, but he shall have his whole money.—*CRAWLEY v. CROWTHER* (1702), Freem. Ch. 257; 22 E. R. 1194.

*Annotation:—*Reid. Grant v. Vaughan (1764), 1 Wm. Bl. 485.

**1006. — Accommodation bill—Bankruptcy of indorser.]**—As an accommodation bill does not pass under a commission of bankruptcy against the payee, he may indorse it, after an act of bankruptcy, & his indorsee for a valuable consideration may recover upon it against the acceptor.—*WALLACE v. HARDACRE* (1807), 1 Camp. 45, N. P.

*Annotations:—*Mentd. Williams v. Bayley (1866), L. R. 1 H. L. 200; Jones v. Merionethshire Permanent Benefit Bldg. Soc., (1892) 1 Ch. 173.

*See* 1882 Act, s. 28 (2).

**1007. — Partial value only given.]**—It is no answer to an action by indorsee against acceptor of an accommodation bill, to say, that he did not give an adequate consideration for it.—*COSTAR v. MERETT* (1822), 1 L. J. O. S. C. P. 2.

**Amount recoverable.]**—*See* cases in Part XIII., Sect. 11, sub-sect. 1, post.

**1008. — With notice—Accommodation bill.]**—It is no defence to an action by a bona fide holder of a bill, that the bill was an accommodation one,

note was made without consideration, & could not be recovered upon.—*HALIFAX STREET CARETTE CO., LTD. v. DOWNIE* (1894), 27 N. S. R. 180.—CAN.

**1007.1. — Partial value only given.]**—In an action by the indorsee against the maker of a note for the accommodation of the payee, deft. pleaded that plaintiff gave only a certain sum for it.—*Held:* deft. could not be charged with more than plaintiff gave for the note.—*STRATHY v. NICHOLLS* (1844), 1 U. C. R. 32.—CAN.

**1007.2. — Replication to introduce condition making full amount payable.]**—To a plea by the maker of an accommodation note that plaintiff, the indorser, gave only partial value for it, plaintiff replied that the sum was to be paid at a particular time, but it was not so paid, plaintiff was to hold the note for the whole amount secured by it.—*Held:* the replication was bad.—*STRATHY v. NICHOLLS* (1844), 1 U. C. R. 32.—CAN.

**1. — With notice—Insurance policy not in accordance with contract.]**—Defa. applied for a policy in an insurance co., giving a note for first premium. When the policy was presented to deft. he found that it was for a less amount & not in accordance with the policy for which he contracted. He sent the co. a cheque to cover the time he had retained the policy & repudiated the contract. The co. transferred the note to their agent, who brought action to recover the balance.—*Held:* there had been no consideration given for the note, & the transferee having notice was in no better position to recover thereon than the co.—*FRANKLIN v. MORTIMER* (1818), 15 O. W. R. 140.—CAN.

**2. — Two notes given for same debt.]**—O. signed three promissory notes in favour of K. for valuable consideration & K. further indorsed O. to sign three other notes, the names of the payees being left blank, K. agreeing to hold one set of notes as security for the other set. P. was respondent of the transaction between K. & O., & obtained possession of both sets of notes, four from K. & the other



& that known to the holder.—*SMITH v. KNOX* (1799), 3 Esp. 46, N. P.

*Annotation*.—*Held*. *Re Peterson & Sammon, Ex p. Sammon* (1832), 1 Decc. & Ch. 364.

1009. ————]—A. owed *plff.*, a stock-broker, £115 in respect of dealings in stocks & shares. In order to provide funds to meet the debt *deft.*, at A.'s request, drew a cheque for £115 payable to A. or order, which A. was to pay into his bank to meet his cheque for the same amount which he drew at the same time in favour of *plff.* A. indorsed the cheque drawn by *deft.* & paid it into his bank, & handed his own cheque to *plff.* *Deft.* changed his mind & stopped his cheque, & thereupon A. handed it to *plff.*, who had notice that it had been dishonoured. In an action by *plff.* against *deft.* on the cheque:—*Held*: as the cheque was an accommodation bill, & as *plff.*, even assuming that he gave consideration for it, was not a holder in due course, inasmuch as he took the cheque with notice that it had been dishonoured, he took it subject to any defect of title attaching to it at the time of dishonour, & as A. negotiated it to *plff.* in breach of faith instead of paying it into his bank, there was a defect of title attaching to it within 1882 Act, s. 29, & *plff.* was not entitled to recover.—*HOBBS v. McLAUREN* (1908), 21 T. L. R. 494, C. A.

1010. ———— Without notice.—Accommodation bill.]—It is no answer to an indorsee for valuable consideration, without notice, that the bills were

two, owing to their having been put into circulation through transactions between K. & certain parties to whom K. had made loans. In an action on all six notes:—*Held*: as no consideration had passed for the second set of notes, & P. was aware of this, P. could only claim upon one set.—*PILKINGTON v. GLENN'S ASSIGNEES* (1863), 4 S. 198.—S. AF.

1008 I. ———— Accommodation bill or note.]—*Held*: an accommodation party is liable on a bill to a holder for value even if the holder knew of the accommodation.—*LOWRY v. CLAY* (1907), 2 E. L. R. 287.—CAN.

1008 II. ———— Time given to drawer.]—In an action by the indorsee against the *exor.* of the acceptor of a bill, *deft.* pleaded that the bill was accepted for the accommodation of the drawer, who indorsed it to *plff.*, who, at the time of the indorsement, had notice it was an accommodation acceptance, & that after it became due the holder gave time to the drawer, & thereby discharged the acceptor:—*Held*: a bad plea.—*FINAY v. BAKER* (1850), 13 L. L. R. 566; 2 Ir. Jur. 307.—IR.

1008 III. ———— Payee discharged by holder.]—To an action on a promissory note made by *deft.* in favour of P., or order, & by him indorsed to *plff.*, *deft.* pleaded that he made & gave the note to P. for his accommodation, that the note was received by L., their manager for *plff.*, with full knowledge that the note was so given for the accommodation of P., & *plff.*, while they were holders, discharged P. from all liability on said notes:—*Held*: the plea was no answer to the action.—*BANK OF NEW BRUNSWICK v. BROWN* (1879), 19 N. B. R. 106.—CAN.

k. ———— Note given in respect of unfounded claim.—Though claim *bona fide*.]—*Plff.* sued on a promissory note made by *deft.* in favour of W., or order, & indorsed by W. to *plff.* The note

drawn merely for the accommodation of the drawers.—*Ex p. LAMBERT* (1806), 13 Ves. 179; 33 E. R. 202, L. C.

*Annotations*.—*Held*. *Re Overend, Gurney, Ex p. Swan* (1848), L. R. 6 Eq. 344. *Held*. *Re Baillie, Ex p. Greenwood* (1834), 3 Decc. & Ch. 398.

1011. ————]—Although when certain bills were given there was no debt due from the acceptors to the drawers, a judgment recovered upon the bills by *bona fide* holders for value without notice:—*Held*: one which the *ct.* would not set aside.—*PERUVIAN RAILWAYS CO. v. THAMES & MERSEY MARINE INSURANCE CO., Re PERUVIAN RAILWAYS CO.* (1867), 2 Ch. App. 617; 36 L. J. Ch. 804; 16 L. T. 644; 15 W. R. 1002, L. J.

*Annotations*.—*Held*. *Re Imperial Silver Quarries Co.* (1868), 18 W. R. 1220; *Re General Co. for the Promotion of Land Credit* (1869), 5 Ch. App. 367, n.; *Kenny's Patent Button-Holding Co. v. Somerville & Lutwyche* (1878), 38 L. T. 878; *Guthrie v. Land Corp. of Ireland* (1882), 22 Ch. D. 349; *Atkins v. Wardle* (1889), 68 L. J. Q. B. 371.

Accommodation bills generally, see Sect. 3, *ante*.

1012. Holder in due course.—Two bills for price of same goods.]—Where two or more bills were accepted by a firm, each of them for the whole price of an article furnished, & the bills got into the hands of *bona fide* holders for valuable consideration:—*Held*: the firm was liable for them all.—*DAVISON v. ROBERTSON* (1815), 3 Dow. 218; 3 E. R. 1044, H. L.

*Annotation*.—*Consol. Yorkshire Banking Co. v. Houston* (1880), 5 C. P. D. 109.

1010 II. ———— Note renewed & interest paid by maker.]—L. at the request of R., who was indebted to M., made his promissory note to M., without any consideration being given to him. It gave the note to M., who had no knowledge of the facts, & M. credited R. with the face value of the note. L. renewed the note from time to time & paid interest to M.:—*Held*: L. could not set up a defence of no consideration in an action on the note.—*McLAIN PATENT CO. v. LIND* (1917), 44 N. B. R. 242.—CAN.

1010 III. ———— Agreement as to liability between indorser & payee.]—A., being indebted to *plff.* & other persons, gave *plff.* a bill of sale of his goods, *plff.* agreeing to pay A.'s accommodation notes. Among the accommodation notes was one made by *deft.* in favour of A., who indorsed it to *plff.* without notice that it was an accommodation note. The note was discounted by a bank, & the proceeds received by A., & *plff.* was obliged to pay it at maturity. In an action by *plff.* to recover the amount of the note:—*Held*: though *plff.*'s agreement to pay the accommodation notes was made with A., *deft.* could avail himself of it as a defence to an action on the note.—*PETERS v. WATKINSON* (1884), 21 N. B. R. 154.—CAN.

n. Holder in due course.—Form of plea.—No consideration for drawing & indorsement.—Bill given in exchange for forged bill.]—To an action by the indorsee against the drawer of a bill of exchange, *deft.* pleaded that a bill similar to that sued on, & purporting to be accepted by him, was shown to him by *plff.*'s agent, who was then informed by *deft.* that the acceptance was a forgery; but, at the agent's request, & without having then or since received any consideration for so doing, *deft.* wrote his name as drawer under the forged acceptance; & that, subsequently, at the request of *plff.*'s agent, *deft.* signed & indorsed over to

had been given for a claim by W., which was utterly unfounded, although made *bona fide*, of which facts *plff.* had notice:—*Held*: *plff.* could not recover.—*BRUNKEN v. BRECKENRIDGE* (1867), 6 N. S. W. S. C. R. 163.—AUS.

l. ———— Accommodation indorser.—For benefit of holders.]—In an action upon a promissory note against the makers, & the indorser, it appeared that the indorser had indorsed without consideration for the accommodation of the holders, & upon an agreement with them that he should not be held in any manner liable upon the note:—*Held*: he was not liable.—*LANE v. RAY, STREET & CO.* (1886), 26 S. C. R. 79.—CAN.

m. ———— For benefit of husband's firm.]—*Deft.* (as the wife of a member of a firm) the note sued on was indorsed by her for the accommodation of the firm, & was delivered by them to *plff.* as collateral security. *Plff.* had full knowledge at the time of taking the note that it was obtained from *deft.* by her husband without consideration & for the accommodation of the firm & for *plff.*'s benefit:—*Held*: *plff.* could not recover.—*BANK OF MONTREAL v. SCOTT* (1905), 6 O. W. R. 411.—CAN.

1010 I. ———— Without notice.—Accommodation note.]—To an action on a promissory note brought by the indorsee, *deft.* pleaded on equitable grounds, that the note had been made for the payee's accommodation, alleging that *plff.* had knowledge. *Plff.*, in his affidavit to set aside the plea, denied knowledge; *deft.* in reply asserted his belief that *plff.* had knowledge, & that *plff.* & the payee had been very much mixed up with each other, & "he considered it almost impossible, but that *plff.* should have known the true history of the note":—*Held*: the plea must be set aside, *plff.*'s denial of knowledge not being controverted by *deft.*—*KANBEN v. ARNOLD* (1881), 2 R. & Q. 367.—CAN.

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*Recl. N. — Absence or failure of consideration as defence to action on instrument: Subsects. 1 & 2.*

**1013. — Form of plea.** — A plea of want of consideration, in an action on a bill of exchange, must, besides showing the circumstances, distinctly allege that there was no other consideration than that mentioned. *HONEY v. WRIGHT* (1852), 12 C. B. 445; 19 L. T. O. S. 108; 134 E. R. 980.

*See, also, Nos. 997, 998, ante.*

**1014. — No consideration for acceptance.** — To a declaration by indorsee against acceptor, deft. pleaded that the bill was accepted without consideration from the drawer. *Held*: *WR. — LAW v. CHIRSKY* (1834), 1 Bing. N. C. 267; 1 Scott, 95; 4 L. J. C. P. 9; 131 E. R. 1119.

*Annotation. — Held. Mills v. Barber* (1846), 1 M. & W. 435.

**1015. —** In an action by indorsee against acceptor of a bill of exchange, a plea that there was not at any time any consideration for deft.'s acceptance or paying the bill of exchange. *Held*: bad on special demurrer.

The plea does not exclude the case of plff. having given a valuable consideration for the indorsement to him, & the indorsement is *prima facie* evidence that he had (*PARKER, B.*). *REYNOLDS v. IVEMEY* (1835), 3 Dowl. 151.

**1016. — Or for indorsement.** — To a declaration on a bill of exchange, by indorsee against indorser, deft. pleaded that he indorsed the bill to plff. without having or receiving any value or consideration whatsoever for or in respect of his indorsement; & that he, deft., had not at any time had or received any value or consideration whatsoever for or in respect of such indorsement. *Held*: the plea was sufficient. *EASTON v. PRICHETT* (1835), 2 Cr. M. & R. 512; 4 Dowl. 519; 1 Gale, 250; 5 Tyr. 1129; 4 L. J. Ex. 335; 150 E. R. 232, Ex. Ch.

*Annotations. — Held. Mills v. Barber* (1846), 2 Cr. M. & R. 103; *Moughtin v. Kilmory* (1855), 1 Cr. M. & R. 71; *Woodgate v. Field* (1842), 2 Haro. 211. *Held. Sool v. Rich* (1835), 5 Tyr. 637.

**1017. —** A plea to *assumpsit* by indorsee of B. against a prior indorser, that deft. had no consideration for indorsing, & that B. indorsed to plff. without any consideration, & that plff. had always held without any consideration. — *Held*: bad in substance. — *THUNDER v. NAKKLEY* (1835), 3 Ad. & El. 522; 1 Har. & W. 309; 5 Nev. & M. K. R. 138; 4 L. J. K. R. 206; 111 E. R. 512.

him the bill which was now void on, & received back the spurious bill; & that, save as aforesaid, deft. did not receive any consideration for the making or indorsing of the bill sued on. *Held*: that the defence was not an answer to the action, it being consistent with the defence that plff. was the holder of the bill for value. — *McKENNA v. DOWELL* (1838), 3 L. C. L. R. 10; 10 Ir. Jur. 342. — IR.

**6. — No consideration for making.** — In an action upon certain promissory notes in which the defence was a denial of the making of the same & of consideration therefor. *Held*: plff., in his reply should be allowed to plead the facts which showed how the notes came into his possession & on which he relied to prove his case. — *SHIPPIN v. HAYMAN* (1814), 26 O. W. R. 12, 638; 4 O. W. R. 336, 4 O. W. R. 254; 10 D. L. R. 478. — CAN.

**7. — No consideration for indorsement.** — A plea that deft. indorsed without consideration from the maker or plff. is bad. — *HANKS v. HARTON NORTH AMERICA v. SHAWWOOD* (1849), 4 U. C. R. 213. — CAN.

**8. —** It is no defence by the maker that plff., an indorser, gave no value to the indorser for his indorsement, or that he took the note knowing that it was indorsed for accommodation of the maker, without denying that he is a holder for value. — *MILLER v. FERRIS* (1839), 1 U. C. R. 246. — CAN.

**9. —** An indorser for accommodation cannot plead want of consideration when he signed expressly to give legal value to something which otherwise had none. — *DAVID v. HEALING* (1815), Q. R. 418, C. 312. — CAN.

**1018. —** Action on two bills of exchange by indorsee against acceptor. Plea, as to one bill, no consideration between drawer & deft., & as to the other, no consideration paid by plff. to deft. The ct. set aside the pleas, with costs, & allowed plff. to sign judgment, although deft. was not under terms. — *KNOWLES v. BURWARD* (1839), 10 Ad. & El. 19; 2 Per. & Dav. 235; 8 L. J. Q. R. 200; 3 Jur. 1102; 113 E. R. 8.

*Annotation. — Held. Bradbury v. Emans* (1839), 9 L. J. Ex. 7.

**1019. —** Declaration by indorsee against acceptor of a bill, drawn by R., & indorsed by him to M., & by M. to plff. Plea, that there was no consideration for the drawing or acceptance of the bill, nor for the indorsement by M. Replication, that M.'s indorsement was in blank, & that after that indorsement, R. & Co., who appeared to plff. to be, & whom he believed to be, the lawful holders of the bill, delivered it to him for value, & without notice. *Held*: the replication was good in confession & avoidance, & was not a departure. — *ARMOUR v. ANDERSON* (1841), 1 Q. R. 498; 9 Dowl. 595; 1 Gal. & Dav. 103; 11 L. J. Q. R. 31; 113 E. R. 1223.

*Annotation. — Held. Munroe v. Border* (1849), 8 C. B. 862.

**1020. —** To an action upon a bill of exchange by indorsee against acceptor, deft., being under terms of pleading issuable, pleaded that the bill was drawn by M., at the request & for the accommodation of deft., & without any consideration or value whatever, & that the bill was indorsed by M. without any consideration or value given by plff. for such indorsement to deft. or M., or to any other person whomsoever. *Held*: plff. was entitled to sign judgment. — *HUNTER v. WILSON* (1849), 4 Exch. 489; 7 Dowl. & L. 221; 10 L. J. Ex. 8; 14 L. T. O. S. 183; 151 E. R. 1306.

**1021. —** To an action by indorsee against acceptor of a bill of exchange, deft. pleaded, that the drawer indorsed the bill to plff. without value or consideration, & that plff. always held same without value or consideration, & that, after the bill became due, the drawer accepted certain scrip certificates from deft., in full satisfaction & discharge of the bill. Replication, that the bill was indorsed for a good & sufficient consideration. *Held*: the plea was bad, & plff. was entitled to judgment *non obstante veredicto*. — *MILNES v. DAWSON* (1850), 5 Exch. 948; 20 L. J. Ex. 81; 16 L. T. O. S. 263; 155 E. R. 413.

**1016 I. — No consideration for acceptance. — Or for indorsement.** — A defence which avers "that plff. did not give deft. any consideration for the indorsement to plff. of the bill of exchange," will be set aside as embarrassing. — *FARRIS v. BOW* (1856), 5 Ir. Jur. 108, 137. — IR.

**1016 II. —** In an action by indorsee against acceptor of a bill of exchange, a plea that the indorser had not given full value for the bill, was set aside by the ct., as being frivolous & sham, & plff. allowed to mark judgment. — *LOUGHRAN v. HILL* (1856), 6 L. C. L. R. 263. — IR.

**1016 III. —** It is no answer to an action by the indorsee of a bill against the acceptor that the indorser gave no consideration for it. — *BANK OF NEW ZEALAND v. BIRD*, Mac. 251. — N.Z.



**1022. Holders being partners—Accommodation bill accepted at request of one partner—Without knowledge of other partner.**—A bill was indorsed to A. & B., partners, in respect of a debt due to them from the drawer & indorser. The bill having been accepted by deft. at A.'s request, & A. having also engaged to provide for the bill at maturity:—*Held*: the assignees of A. & B. were not entitled to recover against deft., though B. was not privy to the acts & engagements of A. —*JOHNSON v. PECK* (1821), 3 Stark. 66, N. P.

**1023. Holder indebted to accommodated party in larger amount.**—A. having accepted bills for the accommodation of B., the latter discounted them with his bankers, who became bkpts. before the bills were due, being indebted to B. in a cash balance exceeding the amount of the bills. Upon the joint petition of A. & B.:—*Held*: the assignees were not entitled to sue A. upon the bills, & the bills ought to be delivered to B. in part discharge of the balance due to him. —*Re SIKES, Ex p. HIPPINS* (1826), 2 Gl. & J. 93; 4 L. J. O. S. Ch. 195, L. C.

*Annotations*:—*Distd.* *Strong v. Foster* (1855), 17 C. B. 201. *Consd.* *Re Royal British Bank, Ex p. Hansa* (1857), 28 L. T. O. S. 296. *Mentd.* *Duncan, Fox v. North & South Wales Bank* (1880), 6 App. Cas. 1.

**1024. Person taking up bill for honour of drawer—Accommodation bill.**—A person taking up a bill for value for the honour of the drawer may sue the acceptor, though the bill was an accommodation bill as between the acceptor & drawer. —*Re OVEREND, GURNEY & Co., Ex p. SWAN* (1808), L. R. 6 Eq. 311; 15 L. T. 230; 10 W. R. 500.

*Annotations*:—*Re European Bank, Ex p. Oriental Commercial Bank* (1870), 5 Ch. App. 358; *Oriental Finance Corpn. v. Overend, Gurney* (1871), 7 Ch. App. 115.

#### PART X. SECT. 8, SUB-SECT. 2.

**1025 l. Must be specifically alleged.**—*Ground for counterclaim.*—In an action on a promissory note deft. in his affidavit filed on appearance was so vague & unsatisfactory as not to disclose any defence, all that was hinted at was a failure of consideration:—*Held*: this did not afford any defence but might be the basis of a counterclaim. —*McLAREN v. FRUCHER* (1915), 14 O. W. N. 30. CAN.

**1025 l. Total failure—Immediate parties.**—In an action on a bill of exchange for \$3,016.85 drawn by piffs. & accepted by deft., deft. pleaded an entire failure of consideration:—*Held*: the plea was a good defence. —*BULLION MINING CO. v. CARTWRIGHT* (1905), 5 O. W. R. 521; 6 O. W. R. 505; 10 O. L. R. 438.—CAN.

**a. — Agreement abortive.**—Piff. joined one D. as joint maker of a promissory note on the understanding that D. would buy certain works. It was not given for payment of a debt due by D. but expressly for the price of works to be bought by him. The agreement became abortive & neither side could carry out the contract of sale & purchase:—*Held*: summary diligence was in the circumstances incompetent. —*McALLISTER v. MANN* (1869), 5 Sc. L. R. 239.—SCOT.

**b. — Cheque as deposit on tender for contract—Withdrawal of tender.**—A tender to erect buildings, enclosing a cheque as a deposit, may be withdrawn before acceptance, & in such case the tenderer is not liable to pay the amount of the cheque to a holder with notice. —*FARR v. IYRON* (1864), 3 N. Z. L. R. 137.—N.Z.

**Transfer by gift—Position of donee.**—See Part XI., Sect. 8, post.

**Effect on burden of proof of consideration.**—See Sect. 10, sub-sect. 2, post.

#### SUB-SECT. 2.—FAILURE OF CONSIDERATION.

**1025. Must be specifically alleged.**—*CLARK v. LAZARUS*, No. 989, ante.

**1026. Total failure—Immediate parties—General rule.**—Where the consideration of a bill of exchange fails entirely, this will be a sufficient defence to an action on the bill by the original party. —*MORGAN v. RICHARDSON* (1806), cited 7 East, 482, n.; 1 Camp. 40, n.; 3 Smith, K. B. 187, n.; 103 E. R. 187.

*Annotations*:—*Consd.* *Tye v. Gwynne* (1809), 2 Camp. 346. *Held.* *Day v. Nix* (1824), 9 Moore, C. P. 159; *Obbard v. Betham* (1830), L. & Welsh, 180; *Warwick v. Nairn* (1855), 10 Exch. 762. *Mentd.* *Boston v. Dutter* (1806), 3 Smith, K. B. 486.

**1027.**—A total failure of consideration may be given in evidence between the original parties as an answer to the action. —*OBHARD v. BETHAM* (1830), L. & Welsh, 180; 5 Man. & Ry. K. B. 632; 8 L. J. O. S. K. B. 251.

**1028. Insolvency of payee's agent before money received.**—Where, by the custom of trade, bills are given before the money is received, if the payee's agent, who was to pay the money, becomes insolvent before the money is received, the drawer is not liable on the bill to the payee. —*PUGET DE BRAS v. FORBES* (1702), 1 Esp. 117, N. P. *Annotations*:—*Appld.* *Astley v. Johnson* (1869), 5 H. & N. 137. *Mentd.* *Munroe v. Burdier* (1869), 4 C. B. 862.

**a. Note given for premium on application for insurance policy—Application withdrawn.**—Deft. on applying for a policy of insurance made his promissory note for the premium. Before his application was accepted by the co. he withdrew it. *Held*: he was not liable on the note. —*INSURANCE v. BRASSON* (1907), 4 E. L. R. 97. CAN.

**d. N. P. JOHNSON v. G. & G. FLEMING MANUFACTURING CO.** (1904), 36 N. B. R. 397.—CAN.

**a. Failure to show acceptance by insurer.**—Piff. having failed to prove that the insurance policy had been forwarded to deft., the note for the premium upon which the action is based. *Held*: null & void. —*GILLES v. JACQUES* (1885), 29 L. C. J. 138; *reversd.*, 31 L. C. J. 368.—CAN.

**l. — Rejection of agreement.**—A person who applies for & receives a life policy & gives his promissory note for the first premium, cannot, by refusing to pay the note, & returning the policy, avoid liability for the full amount of the note, although the policy becomes void by reason of such non-payment. —*MANT VACTURERS' LIFE INSURANCE CO. v. HOWES* (1907), 5 W. L. R. 401; 16 Man. L. R. 549.—CAN.

**a. —**—Deft. gave two promissory notes to piff.'s broker for shares in a fishing vessel then under construction, the shares to be transferred to deft. upon payment of the amount of the notes. Deft. failed to pay the notes & deceased, leaving deft. as having no interest in the shares, & without consulting

him or notifying him, sold the shares, thereby putting it out of his power to make the transfer. *Held*: the case was one of rescission of the agreement, & there having been a total failure of consideration, piff. could not recover on the notes. —*KATZNACH v. BERN* (1915), 19 N. B. R. 60.—CAN.

**b. — Conditional sale.**—Piffs. sold a motor car under a conditional sale agreement to deft., who gave a promissory note for the price. The note contained a condition that until payment of the note, the car was to remain the property of piffs. After several payments, deft. made default, whereupon piffs. without previous notification to deft., seized the car & took it into their own possession. Piffs. did not notify deft. as to their intentions, & so far as deft. knew, piffs. treated the car as their own & might have sold it. *Held*: piffs., upon resuming possession of the automobile with an apparent intention of retaining possession of it, rescinded the original contract in reference thereto, & could not enforce payment of the note. —*ROYCE CARRIAGE CO. v. AQUINAS* (1914), 29 W. L. R. 234; 26 Man. L. R. 47; 7 W. W. R. 655.—CAN.

**k. — Consideration superseded by new agreement.**—C. having purchased Y.'s interest in certain lands subject to a mortgage, gave his promissory note to Y. for the balance of the purchase price. Subsequently C. sold & Y. being liable for the mortgage, C. agreed to obtain Y.'s discharge from the mortgage, whereupon Y. signed a document some other price, agreeing that all parties should be in the same position as if the deed of sale had

# 160 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 4. Absence or failure of consideration as defence to action on instrument: Sub-sect. 2.]*

**1029. Fraudulent warranty on sale of goods - Goods tendered back but refused.**—In an action on a bill given for the price of goods sold under a warranty given fraudulently, the breach of the warranty is an answer to plff.'s demand, if fraud is proved & deft. had tendered back the goods, although plff. did not accept them. *Lewis v. CORMACK* (1860), 2 Taunt. 2; 127 E. R. 974.

*Annotation.*—*Hood v. Horsfall & Thomas* (1867), 6 L. T. 467.

**1030. Consideration money for lease - Refusal to execute.** If, A. having agreed to execute a lease of premises to B., who was to pay a certain sum for it, B., who was let into possession, accept a bill for the consideration money, drawn on him by A., it is no defence to an action on the bill by A. against B. that the former refused to execute the lease, but this remedy is on the agreement. *MORRISON v. JONES* (1811), 14 East, 480; 3 Camp. 38; 101 E. R. 688.

*Annotation.*—*Held, Obbard v. Betham* (1840), 1 & Weib. 189.

**1031. Acting as executor - Payee pre-deceasing maker.** A subscribing witness to a promissory note expressed to be payable on demand for value received, proved that, just before it was signed, the maker was requested by

the payee to give it him in lieu of a legacy left him by the maker, who was then very ill, for the trouble he would have in acting as his exor. The payee having died before the maker:—*Held*: the payee's exors. could not recover on the note against those of the maker.—*SOLLY v. HINDE* (1834), 2 Cr. & M. 516; 4 Tyr. 305; 2 L. J. Ex. 151; 149 E. R. 805.

*Annotation.*—*Held, Abbott v. Hendricks* (1840), 10 L. J. C. P. 51.

**1032. Failure to deliver goods sold.**—To an action by indorsee against drawer of a bill of exchange, deft. pleaded that the bill was given in payment of the price of seventeen pockets of hops sold by plff. to deft., as hops of a certain grower, & answering certain samples, to be delivered by plff. to deft. within a reasonable time, that, although a reasonable time had elapsed, plff. had not delivered to deft. any hops answering the samples, or any hops whatsoever, & that there was no consideration for the bill except as aforesaid. Replication, *de injuria*. Plff. had delivered to deft. seventeen pockets of hops, but inferior to the samples: *Held*: (1) the general allegation in the plea that plff. had not delivered any hops whatever, was immaterial, & might be rejected, & that, without it, the plea showed a total failure of consideration, & was an answer to the action; (2) if plff. relied on deft.'s acceptance of the inferior hops, he ought to have replied it.—*WELLS*

never been passed. The indorsee, subsequently gave a discharge to Y. in conformity with the above agreement. In an action by Y. against C. on his promissory note. *Held*: there was no consideration given for the note. *Yates v. CANNISTON* (1890), 18 B. C. R. 713. CAN.

**1. Breach of warranty.** In an action to recover the amount of a bill of exchange, which had been drawn by deft. in favour of plff. for the price of a horse, breach of warranty & unsoundness are no defence to the action. *CHERRY v. SMITH* (1811), 16 Cr. Rep. 127; 31 L. R. 777.—IR.

**m.** Deft. on the purchase of cattle from plff. with a warranty of title gave his note for the price. Before the note became due he discovered a defect in the title, returned the cattle & demanded back the note. In an action by plff. on the note. *Held*: deft. was not liable. *HARRIS v. NICKEL* (1866), 3 Terr. L. R. 262. CAN.

**n.** Article sold under trade name. A. & W. & W. binder was sold by plff. to deft. On an action upon lien notes given for the price:—*Held*: it was no answer to set up the goodness of the article for the purpose for which it was sold or for any particular purpose, the binder having been sold under its trade name & there being no implied warranty of fitness. *FRISCH & WOOD v. KERR* (1866), 7 Terr. L. R. 191; 3 W. L. R. 69. CAN.

**o.** Breach of condition. In an action by the payee of note deft. pleaded that at the time of making the note he was indebted to plff.; that at the request of plff. he made the note upon certain conditions which he fulfilled; that in consideration of these conditions plff. undertook not to take proceedings for the recovery of the debt until default was made on the note; & that before the note was due, plff. took proceedings. The jury having found for deft. upon this plea; & by direction of the ct., for

plff. upon the general issue: *Held*: the finding of the jury having shown a total failure of consideration for the note, deft. was entitled to a general judgment upon the record. *PEPPER v. MAQUINN* (1847), 10 L. L. R. 461. IR.

**p.** Where an agreement has been made for the carriage of goods, & the amount of freight payable has been ascertained & agreed to, & a cheque given to the carrier for the freight, upon & in consideration of the carrier's promise to deliver the goods on demand, delivery of the goods, if demanded, is a condition precedent to the right to enforce payment of the cheque. The refusal of the carrier to deliver on demand, before the dishonour of the cheque, constitutes an entire & not merely a partial failure of consideration, & may, as between the parties, be pleaded in bar to an action on the cheque. *LANSIE v. GIBBERN*, Mac. 284. N.Z.

**q.** Plff. sold & delivered a quantity of pine logs to deft., which were paid for partly in cash, & for the balance deft. gave the promissory note sought to be recovered on, which stated, however, that the value received was contingent on no claim being made for the logs. The logs having been re-ventilated by third parties, as having been cut upon their land, deft. gave them his note for stampage for a larger sum than that for which the note was given to plff. In an action by plff. *Held*: deft. was not liable. *GILBERT v. CHAPMAN* (1881), 13 L. C. R. 139. CAN.

**r.** Condition stipulated after action brought. Plff. & deft. were joint makers of a note for deft.'s accommodation. Deft. gave plff. the note used on in consideration of plff. undertaking to pay the joint note. When this action was brought plff. had not been called on to pay nor had he paid the joint note, but after he brought this action and before the trial he had paid it.—*Held*: plff.

could recover. *RAFFER v. SHAW*, 21 C. L. T. 507. CAN.

**1032 i.** Failure to deliver goods sold. In an action on a promissory note deft. pleaded, (1) that the note was given in consideration of goods to be sold & delivered, which were not sold & delivered; & (2) that it was given in consideration that the payee would cause to be delivered to deft. a cargo of coals, & that he did not cause them to be delivered. A demurrer to the first plea was allowed, & to the second plea was overruled. *KER v. M'KEE* (1878), 12 L. L. T. Jo. 297.—IR.

**1032 ii.** No request for delivery. In an action by the indorsee against the maker of a promissory note, deft. pleaded that the note was made & delivered to plff. in payment of goods, to be delivered by plff. to deft., & that they remained undelivered, but not averring any request for their delivery. On demurrer: *Held*: a bad plea.—*ANDERSON v. JENNINGS* (1845), 2 U. C. R. 422.—CAN.

**s.** Failure to deliver stock. In an action on two promissory notes, the defence was that no value had ever been received by defts. There was an agreement between plff. & one of deft. firm for the sale of certain stock by plff. Defts. contended that the notes were merely delivered as receipts or as evidence of a transfer of the stock to them for sale:—*Held*: defts. ought to have the opportunity of showing that no stock had been transferred to them & that the alleged agreement had not been acted upon or had been abandoned. *CLARK v. UNION STOCK UNDER-WEAR CO. (n. of PRINCETON)* (1861), 9 O. W. R. 456; 14 O. L. R. 195.—CAN.

**t.** Price not ascertained. The maker of a bill of exchange given for shares in a co. of which he is one of the underwriters, cannot escape liability on the ground of failure of consideration based upon



*v. HOPKINS* (1830), 5 M. & W. 7; 2 Horn & H. 11; 3 Jur. 797; 151 E. R. 3.

*Annotations*:—*Mond. Davis v. Chapman* (1841), 10 L. J. C. P. 156; *Wallis, Son & Wells v. Pratt & Haines* (1910), 79 L. J. K. B. 1013.

**1033.** ——— **Failure to give written contract of sale of land.**—*Plea*, to an action of debt by payee against maker of a promissory note payable on demand, that the note was given as & for the purchase-money to be paid to *plff.* for land agreed to be sold by *plff.* to *deft.*, & that no memorandum or note of the contract in writing was signed by *deft.*, or any person lawfully authorised by him, & that there was not any consideration or value for the making or payment of the note, except as aforesaid:—*Held*: *bad*.—*JONES v. JONES* (1840), 6 M. & W. 84; 9 L. J. Ex. 178; 151 E. R. 331.

*Annotation*:—*Approved. Sully v. Freen* (1854), 10 Exch. 535.

**1034.** ——— **Failure to pay for bill purchased from drawer.**—*Plffs. & W.*, who were partners in a firm at Rio Janeiro, purchased of *J.* a bill of exchange drawn by him on *defts.* at 90 days' sight, & agreed to pay *J.* the price at the end of a month. The price was not paid, & the bill having been remitted to *plffs.*, they sued the *defts.* who had accepted it:—*Held*: *defts.* were not liable, since there was a total failure of consideration, & as that would have been a defence to an action by the *plffs. & W.*, it was equally available against *plffs.*—*ASTLEY v. JOHNSON* (1840), 5 H. & N. 137; 29 L. J. Ex. 161; 1 L. T. 406; 8 W. R. 218; 157 E. R. 1131.

**1035.** ——— **Forged bills of lading.**—A bank presented to a firm of merchants bills of exchange for acceptance; to the bills were attached memoranda stating that the bank held bills of lading for a specified quantity of cotton. The firm, without seeing to see the bills of lading, accepted the bills of exchange & retired them. The bank & the firm had been in the habit of transacting business together, & had confidence in each other. The bills of lading turned out to be forgeries, but the bank were ignorant of it, & acted in perfect good faith. On bill filed by the firm to make the bank refund the money:—*Held*: the firm would have accepted the bills of exchange, whether they had seen the bills of lading or not, & there had not been such representation by the bank as entitled *plffs.* to recover.—*LEATHER v. SIMPSON* (1871), L. R. 11 Eq. 398; 40 L. J. Ch. 177; 21 L. T. 286; 19 W. R. 431; 1 Asp. M. L. C. 5.

*Annotation*:—*Consol. Guaranty Trust Co. of New York v. Hannay*, [1918] 1 K. B. 43.

non-delivery of the shares, where the delivery of the shares is only to be made upon payment of the price agreed & the maker fails to allege or show willingness on his part to make the required payment.—*CANADA FUND CO., LTD. v. STANFORD* (1917), 50 N. S. R. 252.—CAN.

**a.** ——— **Failure to convey land.**—*Deft.* pleaded that he made the note on account of payment of a piece of land, which *plff.* agreed to sell to him; but *plff.* never had any right in or to the said land, & could not, & did not, convey same to *deft.* pursuant to the agreement:—*Held*: *plea bad*, for not showing when a title was to be made, or what the agreement was.—*BLANCHFIELD v. BIRDALE* (1842), 7 U. C. R. 141.—CAN.

**b.** ——— **Transfer of subject J.**—VOL. VI.

*matter to drawer by mistake. Mistake capable of rectification.*—[1412. Bank brought action upon two promissory notes given in payment of certain mining shares which had been transferred to the bank as collateral security for payment of the note. *Deft.* contended that by the bank transferring the shares into name of a stranger by mistake, he was released from his obligation to pay the notes & take the stock. *Plffs.* were capable of handing over the shares to *deft.* at any time if he had paid the notes:—*Held*: *deft.* was liable on the notes.—*NORTHEAN CROWN BANK v. YANLEY* (1919), 14 O. W. R. 491; 1 O. W. N. 924.—CAN.

**c.** ——— **Notes for rent to become due.**—*Death of lessor.*—*A.* being seized in fee of lands, made jointly

**1036.** ——— **The U. bank presented a bill of exchange to B. & Co., the drawees, for their acceptance, accompanied by a ticket representing that the bank held bills of lading to cover it. B. & Co. thereupon accepted the bill relying on the statement that the bank held bills of lading which both parties thought to be genuine. The bills of lading had been forged by the drawer of the bill of exchange:—Held: B. & Co. were not entitled to demand from the bank genuine bills of lading before paying the amount of the bill of exchange.**—*BAXTER v. CHAPMAN* (1873), 20 L. T. 642; 2 Asp. M. L. C. 170.

*Annotation*:—*Mond. Guaranty Trust Co. of New York v. Hannay*, [1918] 2 K. B. 623.

**1037.** ——— **Defts., who carried on business in Liverpool, purchased cotton from dealers in the United States, who drew a bill of exchange on defts' bank in Liverpool for the price in the following form: "Sixty days after sight this first of exchange (second unpaid) pay to the order of ourselves £1,464 0s. 0d. value received, & charge the same to account of 100/R.S.M.L. bales of cotton," & issued that bill in the United States. Plffs., dealers in foreign bills of exchange in New York, in good faith purchased the bill of exchange with the bill of lading of the cotton attached, & sent the documents to defts' bank in Liverpool, who by arrangement with defts. accepted the bill & paid it at maturity. The bill of lading was a forgery, & no cotton had been shipped under it. Defts., on discovery of the fraud, brought an action in America against plffs. to recover back the amount of the bill so paid by them. Plffs. then brought an action in England, claiming declarations that they did not, by presenting the bill for acceptance with the bill of lading attached, warrant or represent that the bill of lading was genuine, & that they were not bound to repay the amount of the bill:—Held: plffs. did not, by presenting the bill of exchange for acceptance, warrant or represent the bill of lading to be genuine, & defts. were not entitled to recover back the money paid to plffs. GUARANTY TRUST CO. OF NEW YORK v. HANNAY & CO., [1918] 2 K. B. 623; 87 L. J. K. B. 1223; 110 L. T. 321; 34 T. L. R. 427, C. A.**

*Annotations*:—*Mond. Barwick v. R. E. & C. Ry. Co.*, [1920] 2 K. B. 347; *Bombay & Pesta Steam Navigation Co. v. MacLay*, [1920] 3 K. B. 402; *Markwald v. A. O.*, [1920] 1 Ch. 348; *Comptoir Commercial Anversois v. Pover*, [1920] 1 K. B. 608.

**1038.** ——— **Refreshment contract becoming impossible—Cancellation of review.**—*A.* agreed

with *B.* a lease of three lands to *C.*, taking notes from *C.* for the rent, payable as it would become due. The day after the execution of the lease *A.* died intestate, & then *B.* died, & *B.*'s execs. sued *C.* on the notes:—*Held*: they could not recover, the consideration for which the notes were given having failed.—*MURWIN v. GATY* (1837), 1 Ont. Dig. 716.—CAN.

**d.** ——— **Forfeiture of stock—Through fault of stockholder.**—Where a stockholder in a joint stock co. had given notes for his stock, which he afterwards forfeited by not complying with the conditions of the shares:—*Held*: he could not set up such forfeiture as a defence to an action on the notes for the benefit of the co.—*CHAMBERLAIN v. McFAUL* (1840), 1 Ont. Dig. 745.—CAN.

with B. & Co. to supply refreshments at a  
 tariff on board a pleasure steamer on the occasion  
 of a naval review to be held on June 28,  
 be paid on account on the Monday

In accepting the contract B.  
 June 23: "It is, of course, un-  
 that in the event of the cancellation of the review  
 before any expense is incurred by the caterer there  
 shall be no liability on our side," & a cheque for  
 was duly sent in part payment of the contract,  
 nothing on refreshments, & there was no  
 as to any initial outlay by the  
 dled, & B.

not liable,

on the cheque

A. C. 7; 7;

L. J. K. H. 117; L. T. 2 T. L. R. 83; 5  
 W. R. 310, H. L.

**Holder with notice - Bill for**

bill of exchange is

that a  
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failed, sue on the bill in & of an in-  
 dorsement to him: LLOYD v.  
 L. J. O. N.

**1040. Holder for value without notice**

of ion by the

of a bill of exchange, drawn by K. &  
 by defts., they pleaded that K. a

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 by & of

K.

time, took a for the

by

y from plff., on indorsing to him the bill of  
 & also a bill of exchange, drawn by K. u  
 for the amount of

ted the bill of exchange to defts. for  
 & also the bill of lading, indorsed by

on the faith of the bill of  
 in consideration of such security on the

ted to accept such bill of  
 that at the time of the drawing &

by K., to plff., of the bill of exchange in  
 to plff. a bill of lading, the

to which was forged, well

on the faith

of exchange, that defts., on the remittance to  
 by

by

at without  
 for

issued:--*Held*: as plff. was indorsee of the bill  
 of exchange for value, & it was not averred that  
 he obtained the acceptance by any fraudulent  
 representation, or that he knew the bill of lading  
 to be forged, the failure of consideration between  
 K. & defts. was no defence, & plff. was entitled  
 to judgment *non obstante veredicto*.--ROBINSON v.  
 REYNOLDS (1811), 2 Q. B. 100; 1 Gal. & Dav.  
 526; 114 E. R. 76, Ex. Ch.; *affg.* S. C. *sub nom.*  
 v. ROBERTSON (1840), 3 Per. &

G. F. & J. 4; Leather v. Simpson (1871), L. R. 11  
*Reid*, Guaranty Trust Co. of New York v.  
 33 F. L. R. 539.

**1041. Intended agreement for which  
 bill given not entered into.**—Action by indorsee  
 against acceptor of a bill of exchange. Pleas, no  
 consideration, & no indorsement. A. in considera-  
 tion of intended articles with B., an attorney,  
 indorsed & delivered to B. a bill of exchange for  
 £110, drawn upon, & accepted by, deft., but A.  
 was not articulated, as agreed. D., through his  
 cousin, B., had obtained from M. the discount of  
 three £100 bills, which were indorsed to M., &  
 red. B., to save his cousin's credit,  
 the £110 bill to M., as a collateral security  
 for payment of the others. M. knew the con-  
 sideration upon which the bill was indorsed by  
 the drawer, but not that the consideration had  
 failed. M. sued D. on the bills, when R., plff.,  
 his own cheque in payment of the debt, &

attorney, together with the  
 three £100 bills, the bill for £110, not indorsed  
 by M., upon which last he & deft. The jury  
 that plff. put in  
 entitled to M.'s securities, & they found  
 plff.:--*Held*: the holder of the four bills was  
 to realise his debt upon them, & M.  
 was holder without notice, & plff., on

of the debt, stood in M.'s place, the com-  
 had not failed with respect to plff., any  
 it had with respect to M. DORRIS v. GREEN-  
 (1802), 1 New Rep. 31.

**1042. Partial failure Immediate parties. Un-  
 ascertained amount—General rule.**—A partial  
 failure of consideration cannot be given in evidence  
 in answer to an action on a bill of exchange even  
 in the original parties. The remedy for  
 partial failure of consideration is to be  
 by a cross action. CHURCH v. BETHAM  
 L. & Wilsb. 180; 5 Man. & Ry. K. B.  
 632; 8 L. J. O. N. K. H. 254.

**1043. Alleged misrepresenta-  
 tion as to value of business.**—If a bill of  
 change be given in consideration of  
 into partnership with plff., & the treaty is after-  
 off, plff. is entitled to

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N. B.

R.

1042 1.

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c. MOORE

14 O. W. R. 24 4 O. W. N.  
 D. L. R.



on the bill to the amount of the  
he has sustained, & not to the full amount of the  
bill.—**LEDGER v. EWEN** (1794), *Peake*, 263, N. P.

#### 1044. ———— Quality of goods

Action by drawer against acceptor of a bill of  
exchange, payable to the drawer's own order.  
Defence, that the bill had been accepted for the  
price of hams bought by deft. from plff., to be  
sent to the East Indies, & that the hams had  
turned out so very bad that they were almost  
quite unmarketable:—*Held*: it was no defence  
that the consideration failed partially, but in  
such circumstances the giver of the bill must take  
his remedy by an action against the person to  
whom it was given.

(1806), cited 7 East, 482, n.; 1 Camp. 40, n.;  
3 Smith, K. B. 487, n.; 103 E. R. 187.

*Consol. Tye v. Gwynne*  
1821, 3 Moore, C. P.  
1 L. & C.

346;

10  
3 Smith, K. B. 486.

*v. Butter*

#### 1045.

— Action by In-  
acceptor of a bill of  
The bill was drawn by G. & Co. & Co. by  
deft., for the amount of a pipe of  
which he had ordered of

#### 1044 i.

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Q. R. 16 S. C.

W. L. R.

H said thirty  
but H. never requested such

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#### 1044 ii. ————

a ————  
upon which he still owed a large  
amount, & left to deft. As a matter of  
convenience this sale was carried out  
by deft. signing an order for the  
purchase & making a note for the  
price in favour of plffs. Deft. requested  
payment of the note, on the ground  
that the consideration for it had  
wholly or partly failed, & that he had  
not got all the goods ordered or an  
engine of the quality ordered. — *Held*:  
plffs. were not estopped from showing  
that it was K. who had made the  
sale, & as the evidence established  
this, deft. had no remedy against  
plffs. for any defects in the threshing  
engine, & must pay the amount of the  
note.—**CASE THRESHING MACHINE CO.**  
*v. WILKINSON* (1897), 1 W. L. R. 339;  
17 Man. L. R. 32. **CAN.**

1044 v

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(1874), 33

15 Q. W. N. 259.

*v. W.*  
**CAN.**

*Houlston*  
1 C. R.

**CAN.**

1044 vi  
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#### 1044 iii.

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11 N. B.  
13 K. L.

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*v. Hyatt* (1841), 1 U. C. R.

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of a very bad quality up delivered in London, &  
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in the house of the shippers: — *Held*:  
such defence, it must be shown not only  
that plff. was a partner in the house of G. & Co.  
who drew the bill, but that there was a fraud  
part in the first instance in shipping a  
different & very inferior quality to  
that ordered, & if it was a clear fraud in  
shippers, & plff. was a partner in  
could not recover on the bill, but the  
not sufficient, if the commodity shipped only  
of rather an inferior quality to that o

*v.* (1806), 1 40, n.  
and *v. Hest* 1 L. & C.  
180. *Ex p. Hest* 3 Ch.

1046.  
bill of In an action on a  
purchased for accepted for the price of goods  
in

but is driven to his  
*v. Hest* Camp.

*Appl. Obbard v.* L. & Walsh.

*8. Absence or failure of  
use to action on instrument:*

**1047.** In Apr. & July, 1813, B. purchased of A. a material called oropho-  
lithic, of which A. was the patentee. The material  
purchased in Apr. was described in the bill as  
"roofing," & was put on a building by B. by A.'s workmen. That supplied in July  
was described as "material," & was put on by  
B.'s workmen. There had been a previous pur-  
chase in Oct., 1812, which had been described as  
"flooring," & was so applied, & as to which money  
was paid into Ct. In an action upon a bill of ex-  
change by B. in payment of the above  
bills, B. pleaded that he accepted the bill in  
good faith, & that it was for the roofing of  
which he was building with the patent  
material. At trial B. showed that the material  
described it as fit for  
roofing. The judge ruled that there was no  
evidence to be left to the jury in support of the  
plea: *Held*: the direction was right.

with reference to the Treaty for the purchase of  
place in Sept. 1812, at all  
show that the material sold in July.

as was sold for roofing rather than flooring, & the  
plea failing as to part, failed altogether.—*CAMAC*  
*v. WARRINER* (1845), 1 C. B. 356; 4 L. T. O. S.  
397; 9 Jur. 162; 135 E. R. 577.

**1048.** To an action  
by drawer against acceptor of a bill of exchange  
for £313 12s. 9d., debt. pleaded, except  
£108 15s. 3d. parcel, that the bill was drawn &  
accepted in respect of the price of certain goods  
sold by plff. to debt., & for no other debt, that,  
at the time of sale, plffs. promised debt. that the  
goods should be of a certain quality, that he bought  
the goods & accepted the bill on the faith of plff.'s  
promise, that the goods delivered were not of the  
quality but of inferior quality, & that  
they were of the value of £108 15s. 3d. & no more,  
& that, save as aforesaid, there never was any  
value or consideration for the making or accepting  
of the bill of exchange:—*Held*: the plea was bad.  
—*WARWICK v. NAIRN* (1855), 10 Exch. 762; 156  
E. R. 648.

*Retd. Row, McLachlan v. Canosun,*  
A. C. 597.

**1049.** Contract not so beneficial  
as anticipated. A partial failure of consideration  
for a promissory note, constitutes no ground of  
defence, if the quantum to be deducted on that  
account is matter not of definite computation, but  
of unliquidated damages, as, where a note was  
given for plffs. disclosing to debt. an improvement

*Murray*  
*N.Z.*  
17 N. Z. L. R.  
of a note for the maker,  
note him to the  
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plff. then him the note on  
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than \$75:—*Held*: a bad plea.—*KELLY*  
*v. LEE* (1859), 18 U. C. R. 418.—*CAN.*  
paid the duties, but for  
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*741. CAN.* R. *CAN.*  
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*FRANK v. ARTHUR*  
R. 201.—*CAN.*

*v. NARR*  
—*CAN.*



in certain machinery, which turned out to be beneficial than was anticipated by the DAY v. NIX (1824), 9 Moore, C. P. L. J. O. S. C. P. 133.

#### 1050. ——— Relief in equity.

an action was brought on a bill of exchange which had been given for goods sold & delivered, & the party to whom the goods were sold alleged that he had been fraudulently deceived in his contract, the goods delivered being inferior both in quality and quantity to what he had ordered: —Held: he could not maintain a bill for an account & for an injunction to restrain the action, inasmuch as his object was to reduce the amount of the bill of exchange by the damages which he claimed for the alleged breach of contract, & as that was not the subject of set-off at law, it could not be the subject of account in equity.—(GLENNIE v. IMRI (1839), 3 Y. & C. Ex. 436; 3 Jur. 432; 100 E. R. 773.

Annotation.—Conrad. Stewart-Moore v. Sprague (1917), 34 T. L. R. 113.

1051. ——— Holder without value —Unascertained amount. Quality of goods sold.—To a count on a bill of exchange, drawn by G. upon & accepted by deft., & indorsed by G. to plffs., deft. being under terms of pleading issuable, pleaded that he accepted the bill, & delivered it to G. as plffs'.

Quality of goods, as agent for plffs' own business, (stated that certain goods by himself, purchased or not, and were & thereby induced deft. to a quantity, & to give his promissory note therefor. In an action on the note by plff. co., deft. counterclaimed for part of the amount of the note, which he had been obliged to pay to an innocent holder. The jury found that the articles sold were valueless; that deft. had been induced to purchase by misrepresentation; & that he had received no consideration for the note except as to some pads, which he had sold.—Held: plff. co. could not recover for the partial failure of

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8. Loss of r  
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& on their account, in part payment of the money on the sale by plffs. to deft. of a certain ship, that deft. was induced to purchase the ship by the false & fraudulent representations of plffs. & G., then made to him by them, that the ship was as strong as wood & iron could make her, & that she could be sent to sea without any expense. The plea then alleged, that the was not, at the time of the representation, as strong as wood & iron could make her, but, on the contrary, was weak & rotten, & a large sum of money was required to make the ship fit for sea, which plffs. & G. well knew, & further, that there never was any value or consideration for the indorsement of the bill by G. to plffs., or for plffs. being the holders thereof: —Held: the plea was not issuable, & plffs. were entitled to sign judgment. SULLIV v. FREAN (1854), 10 Exch. 535; 150 E. R. 551.

1052. ——— Ascertained amount. Non-delivery of part of goods sold.—In an action by indorsee against acceptor of a bill of exchange a plea stating that the bill was given for goods to be supplied by the drawer, & that only part of the goods were supplied of which deft. accepted a part, & that by reason of the non-completion of contract the part supplied became valueless to him, & also showing that plff. was not a holder

for value will be good, provided also that the value of the accepted is shown to be a ~~deed~~  
**A. MANTONMAN'S BANK v.**  
 (1800), 1 L. R. 2 Exch. 56; 4 H. & C. 656;  
 1 L. J. Ex. 33

**Consol. Thornton v. Maynard** (1875)  
 1 L. R. 10 C.  
 (1875) 124; **Alloany v. Moore** (1882), 47 J. L.  
 1 K. B. 549.

**Effect on burden of proof of consideration.**  
 10, sub-sect. 2.

**D. FRAUD, DURESS, OR UNDUE INFLUENCE  
 AS DEFENCE TO ACTION ON INSTRUMENT.**

2 Act, s. 20 (2).

**SUB-SECT. 1. FRAUD.**

**1053. Misrepresentation** As to document signed  
**Signature null & void.** Deft. was induced to  
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for value, the jury were that,  
 if d signature to the document  
 upon fraudulent representation that it was a  
 ce, & deft. signed it without knowing that  
 a bill, & under the belief that it was a  
 ce, & if he was not guilty of any negligence  
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**MACKINNON** 1 L. R. P L. J. C. P.  
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Bank v.

**Cumberland Banking**  
 1 K. B.

11 L. T. 849; **Clover v.**  
 1891, 1 K. B. 341  
 1 Ch. 1;

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described in a schedule annexed to the agreement. The agreement provided for the conveyance of the lands in fee simple & absolute title on the part of plffs. & for payment of the price by promissory notes payable at different dates. In an action on the note given for the last instalment of the purchase price, deft. pleaded that the title to some portions of the land agreed to be conveyed was defective. **Held:** deft., having gone into possession under the agreement & cut & removed timber, was not entitled to avail himself of this ground as a defence to the action on the note. **BLACKBURN v. BART** (1917), 41 N. & D. 449. CAN.

1. A party having granted a bill at 3 months as the price of the materials of a house, of which he immediately took delivery, & not having objected during the currency that he had not received everything truly included in his bargain, but having asked further indulgence, a

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**1054.** ———.}—Where a person has been induced to sign a promissory note by a fraudulent representation that he is witnessing a deed, & at the time he signs it he believes he is witnessing a deed, & has no knowledge of the existence of the promissory note, & the jury negative negligence upon his part in so signing the document, he is not estopped in an action brought against him upon the note by the payee of the note from relying upon the true facts as a defence, & such facts afford an answer to the action.

The payee of a promissory note is not a "holder in due course" within 1882 Act, s. 29, & even if plff. had been a "holder in due course" he would not upon the facts stated above have been entitled to recover.—**LEWIS v. CLAY** (1897), 67 L. J. Q. B. 224; 77 L. T. 653; 40 W. R. 319; 14 T. L. R. 149; 42 Sol. Jo. 151.

**Annotations:**—**Consol. Herdman v. Wheeler**, (1902) 1 K. B. 361. **Reid. Smith v. Prosser** (1907), 77 L. J. K. B. 71. **Mentl. Chaplin v. Bramhall**, (1908) 1 K. B. 233.

Holder in due course generally, see Sect. 5, ante.

**1055.** ———. **As to amount advanced—Maker surety only—Release of surety.**—Plffs. advanced £2,000 to C., upon the security of a mtge. executed by C., & a promissory note for £2,600 in which deft. joined as a surety. At the time of the advance C. owed plffs. £800, which was deducted from the £2,600, but the recital of the mtge. deed, which was by plffs.' agent, in the presence of deft. stated, untruly, that the £800 had been paid: **Held:** that was a fraud in law, which released deft. from his liability on the promissory note.—**STONE v. COMPTON** (1838), 5 Bing. N. C. 142; 1 Arn. 436; 6 Scott, 846; 2 Jur. 1042; 132 E. R. 1056.

**Annotations:**—**Consol. Green v. Gordon** (1841), 3 Man. & 416; **Mann v. Beeny** (1843), 1 L. T. O. S. 56; **A. v. Hodgson** (1851), 16 Q. B. 889. **Reid. Owen v.** (1851), 3 Mac. & G. 378; **Evans v. Bremridge** 4 W. R. 161; **Mackreth v. Walmsley** (1844), 51 L. T. 19.

**1056.** ———. **As to persons signing note.**—**v. GIBBS**, No. 610.

**1057.** ———. **As to rent due—Defence between immediate parties.**—A. having made a distress for on premises let to B., C., who had purchased from B., accepted a bill of to the landlord in

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**X. SECT. 9, SUB-SECT. 1.**

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the distress & having obtained the acceptance by misrepresenting the fact, could not recover on the bill.—*GREW v. BRVAN* (1822), 3 Stark. 134, N. P.

**1058. Effect of—Contract not disaffirmed.**—To a declaration on a cheque debt, pleaded that he was induced to sign the cheque by the fraud of plff.:—*Held*: the plea imported an allegation that debt., on discovering the fraud, disaffirmed the contract, & debt. was not entitled to a verdict on a traverse of the plea, it appearing that he had

not disaffirmed the contract.—*DAWSON v. HARNES* (1875), 1 L. R. 10 O. P. 166; 44 L. J. O. P. 194; 32 L. T. 159; 23 W. R. 398.

*Annotation*:—*Reid v. Iram v. Mid. Ry. Co.* (1875), 23 W. R. 860.

**1059. Whether defence between remote parties—Repudiation necessary.**—It is no defence by an acceptor of a bill of exchange that he has been imposed upon in the contract, in respect of which the acceptance was given by the drawer of the bill,

to the jury.—*SMITH v. FLEMING* (1870), 2 Han. 147. CAN.

**1058. Effect of—Contract not disaffirmed.**—Deft. having given a promissory note to plff., upon which debt's property was attached in the United States, gave a new note, in order to get the property released:—*Held*: it was too late to object that the consideration of the renewal note was fraudulent.—*TUTTLE v. SMITH* (1848), 3 Kerr. 643. CAN.

**1058 i.**—*Effect of—Contract not disaffirmed.*—Deft. was induced to make the note sued upon by misrepresentations, on the part of the payee & indorser, as to the formation of a co. for the sale of a patent right controlled by the payee, the note being given in consideration of a share which debt. was to have in such co., but it was doubtful whether the co. existed at all, or if it did, whether debt. was over a shareholder. Deft. did not repudiate or rescind the contract under which the note was given:—*Held*: he was not precluded from setting up the defence that it had been obtained by fraud. *WADDELL v. JAYNES* (1872), 29 C. P. 412. CAN.

**1058 ii.**—*Effect of—Contract not disaffirmed.*—Defta. formed a syndicate to purchase a station. The vendor's agent induced debt. to sign promissory notes for the price, on the representation that he would get L. to put his name on the notes. Defta. took possession of the horse & used him until he died. Shortly after signing the notes, debt. became aware that L. had refused to sign them. They did not ask for a return of the notes or indicate that they did not intend to be bound by them. The vendor discounted the notes with plffs., who had no notice or knowledge of fraud or irregularity.—*Held*: debt. had elected to affirm the purchase, & could not now repudiate their liability on account of fraud or misrepresentation. *FIRST NATIONAL BANK OF MINNEAPOLIS v. McLEAN* (1906), 3 W. L. R. 227; 16 Man. L. R. 32. CAN.

**1058 iii.**—*Effect of—Contract not disaffirmed.*—Plff. purchased from debt. co. an engine which proved to be unfit for the purpose for which it was required, sought to get out of his bargain & claimed a return of money he had paid as he alleged under protest & also of promissory notes held by debt. co. in the ct. below plff. had judgment for the return of two unpaid notes & costs; but no judgment was given for money which he had paid debt. co. in settlement of an action brought by them against him, the claim in question not being capable of being described as otherwise than straightforward & non-fraudulent. On appeal:—*Held*: the judgment was a proper one, so far as the latter point was concerned; as to the return of the notes, that could only be supported by a rescission of the written contract & the right to rescind if it ever existed had been lost to plff. by his conduct in not at once rejecting the engine but instead treating it as his own by having it

tested.—*CALDWELL v. COCKSHUTT FLOW CO.* (1913), 30 O. L. R. 244. CAN.

**1058 i.**—*Effect of—Contract not disaffirmed.*—In an action by a bond *fid* holder against the indorsers of a note, it is no defence that the note was indorsed by one partner fraudulently, without the authority of the others & for matters not relating to the partnership.—*McLEOD v. CARMAN* (1869), 1 Han. 593. CAN.

**1058 ii.**—*Effect of—Contract not disaffirmed.*—In an action by transferees of certain promissory notes given to an insurance co. for premiums since earned, debt. pleaded the bogus nature of the transaction by which the co. was formed & for which the notes were given:—*Held*: a holder of negotiable paper as collateral security before it becomes due is not affected by any equities between the original parties. *WORTH v. SHAW* (1858), 3 L. C. J. 160. CAN.

**1058 iii.**—*Effect of—Contract not disaffirmed.*—Bills & notes obtained by fraud are null even in the hands of a third holder. *McDOVELL v. MARRAS* (1881), 29 L. C. J. 70. CAN.

**1058 iv.**—*Effect of—Contract not disaffirmed.*—When a promissory note has been obtained by fraud, the third party, who became the holder even in good faith cannot recover the amount from the signer. *BANQUE JACQUES CARTIER v. LEWIS* (1886), 13 Q. L. R. 39. CAN.

**1058 v.**—*Effect of—Contract not disaffirmed.*—S. J. L. ARNE v. NORMANDIN (1888), 11 L. N. 123; 32 C. L. J. N. 8. 162. CAN.

**1058 vi.**—*Effect of—Contract not disaffirmed.*—Defta. had signed papers in the belief, induced by false representations of payee, that the documents were petitions to the Govt. for a road:—*Held*: debt. were not liable to plffs. who were holders in good faith, for value without notice of any defect or fraud, & had acquired the notes during their currency.—*ALLENWAY v. HARRIS* (1904), 21 C. L. T. (Que. N. 253; 14 Man. L. R. 627. CAN.

**1058 vii.**—*Effect of—Contract not disaffirmed.*—Deft. was a young man of little business capacity & without independent advice when H. induced him to enter into a disadvantageous bargain for the sale of land, which he could not carry out. H. then made false representations as to debt's liability to him for damages, procured from debt. a promissory note, in settlement, & indorsed it to plffs., to be held as collateral security for a note of his own then current. In an action against the maker by indorsee:—*Held*: the issue of the note was affected with fraud or illegality, & plffs. not being holders in due course & having no better title to the note than H. could not recover.—*BANK OF BRITISH NORTH AMERICA v. McCOMBS* (1911), 31 Man. L. R. 38. CAN.

**1058 viii.**—*Effect of—Contract not disaffirmed.*—F. through fraud induced debt. to sign a promissory note which he immediately discounted with T. Bank. Next day debt. learned of this & had F. arrested on a charge of obtaining the note by fraud. F. arranged to pay the bank & induced plffs. to take up the note & criminal proceedings were adjourned from time

to time & finally dismissed. In an action on the note:—*Held*: the paper sued on never became a note, the signatures thereto having been obtained by fraud.—*GRAHAM v. DRIVER* (1910), 17 O. W. R. 60; 2 O. W. N. 131. CAN.

**1058 ix.**—*Effect of—Contract not disaffirmed.*—In an action to recover the amount of a promissory note, made by debt. to L. Co., in payment for shares, which was indorsed to plff. bank, the evidence showed there was absolutely no consideration for the note, the stock scrip being worthless paper:—*Held*: the action should be dismissed.—*CANADIAN BANK OF COMMERCE v. GILLIS* (1911), 21 O. W. R. 224; 3 O. W. N. 646. CAN.

**1058 x.**—*Effect of—Contract not disaffirmed.*—Though the signing of a note, in the form in which it was, may have been procured by fraud, nevertheless a plff. would not be affected by this if he was the holder in due course, & upon the evidence, did not wilfully abstain from making inquiry as to the origin of the note. *HAMILTON v. JACKSON* (1912), 21 W. L. R. 333. CAN.

**1058 xi.**—*Effect of—Contract not disaffirmed.*—In an action upon a promissory note made by debt. in favour of a co. & indorsed by it to a bank, who gave instructions to sell to one debt. upon it, in the name of a nominal plff., it appeared that the note was given for the price of shares, that it was never in the actual possession of this nominal plff., & that it had been lost. Defta. signature to the note was procured by fraudulent misrepresentation; but the bank had no knowledge of the fraud, & was holder in due course & as such entitled to recover thereon.—*TOWNEY v. McNEIL* (1914), 26 W. L. R. 665; 18 D. L. R. 10; 6 W. W. R. 1146. CAN.

**1058 xii.**—*Effect of—Contract not disaffirmed.*—In an action by the indorsee against debt. as one of the makers of two joint & several promissory notes, given to the payee in settlement of a demand, consisting of the purchase-money agreed to be paid for certain mining property, for which the payee was suing at law certain trustees of a joint stock co., of which debt. was one of the directors; the payee (the seller) having waived his lien on the property, & having accepted as his security the personal covenant of the trustees:—*Held*: if debt. had all means of information requisite to enable him to become acquainted with the state of the co.'s affairs, & the relative rights & liabilities of the co. & the trustees, it was no defence in such action that he acted in ignorance, or that deceit had been practised on him in obtaining these securities, by a representation that the co. were liable to the payee for the amount of the purchase-money claimed, there being no evidence to connect the payee with such representations, & the representation itself being substantially true, the co. being bound by the partnership deed to pay the trustees for the mining property.—*HOWARD v. BUSH* (1846), 9 L. L. R. 335. IN.

(once to action on instrument: Sub-secta. 1 & 2.)

A that pltf., an indorsee, was privy to the fraud, wholly repudiated the contract, but still retains

*see* *Hammond* (1822), 3 Stark. 175, N. P.; (1823), 1 L. J. O. S. K. B.

### Form of plea Notice must be

To assumed on a bill of exchange, by deft., indorsed by him to H., & by H., deft. pleaded that he indorsed in blank, & delivered the bill to H., but delivered it to L., who, till H. became possessed, held it for the sole use of deft., & for the specific purpose that he, L., should get it discounted for, & pay the proceeds to, deft.; that L., fraudulently & covinously, in of good faith, & contrary to the purpose, the bill to H., & H. took it, without dis- for deft., contrary to the purpose, & in breach & violation thereof, to wit for the & under colour & pretence of securing an debt from L. to H., that H. was not a bond

holder for value or consideration, & that deft. never had received consideration or value from L., or H., or pltf., or any other, for the indorsing or payment of the bill. Replication *de injuriâ*:—*Held*: the question as to pltf. was, whether he gave any value for the bill, & if he did, he was entitled to the verdict, though the circumstances of the fraud alleged might in other respects be true, & pltf. privy to them, for the denial of his being a *bonâ fide* holder for value, as worded, did not raise the question of his privy to the fraud.—*OTHER v. Rich* (1839), 10 Ad. & El. 784; 2 Per. & Dav. 579; 113 E. R. 297.

*Annotation*:—*Reid. Re Acraman, Ex p. Bushell* (1844), 3 Mont. D. & De G. 615.

1061. — To a count on a promissory note made by deft., payable to the order of J., & indorsed by J. to V., & by V. to pltf., deft. pleaded that the note was obtained by the fraud of B. & others, but it was not alleged that J. was a party to the fraud, or had notice of it:—*Held*: J.'s title being undisputed, the plea was bad.—*MASTERS v. THORNTON* (1849), 8 C. B. 100; 18 L. J. C. P. 318; 137 E. R. 446.

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not signed by A., but by another  
unknown to  
the holder, & resident in a foreign  
country: *Held*: A. could not take  
advantage of this fraud; his  
in respect of the original note  
in equity. *IRWIN v.*  
71, 12 Gr. 485 CAN.

10601. — Form of plea  
plaintiff was holder for  
in an action on a bill drawn by K.

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## PART X. —CONSIDERATION.

**— Relief** an action at law had been commenced by indorsee maker of a promissory note, which was on the ground of fraud, & a distinct allegation that such note was not to be negotiated, but to be an item in the further settling of accounts the parties, & also an allegation that the had received such note with notice of the terms which it was given:—*Held*: the Ct. of Ch. would restrain the indorsee of such note & his agent from issuing execution on any he might obtain in such action at law, until or further order.—*BAINBRIDGE v.* (1805), 12 L. T. 74.

**Set-off prevented between principal parties.**—To an action on a bill of exchange, drawn by B. upon, & accepted by, deft., & indorsed by B. to plff., deft. pleaded that, after the bill was due & before B. indorsed it to the plff., B. was indebted to deft. in a sum exceeding the amount of the bill & interest, & B., in order to deprive deft. of his right of set-off, did, in order to defraud deft. & in collusion with plff., indorse the bill to plff., in order to enable plff. to sue deft. on the bill, without any consideration for the indorsement, & that plff. sued merely as agent of B., & in collusion with him:—*Held*: the plea was bad, inasmuch as the indorsement of an overdue bill, in the circumstances stated in that plea, was no fraud.—*10 C. L. R. 353; 136 E. R. 24; 24 L. J. Ex. 66; 24 L. T. Q. 3 W. R. 160; 3 C. L. R. 353; 136 E. R.*

*Ex*  
1 F. & F. 82; *Anglo* *Steam*  
*Ment* (18) 174.  
1, 1 Q. B. D. 685.  
on burden of proof of consideration,  
10, 2.

1882 Act, s. 29 (2).

**1084. Duress—Bill obtained by fraud—Indorsed under duress.**—Don Miguel, as King of

*Relief in* In *O. W. N. 35. CAN.*  
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### PART X. SECT. 9, SUB-SECT. 2.

**a. Duress—General rule** which gives a right to

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was treasurer under Don Miguel, to S., resident in England, with instructions to recover the amount in question, & remit same to the Portuguese S. having brought his action on the bills the acceptors, & a bill in equity having been filed by the acceptors against S. & the Treasurer of Portugal, for a discovery of the bills under which S. obtained the bills: *Held*: if the bills came into her possession by her agent to S. in which the bill was a bill which the bill was by S., w a et. of law. *GLYN v.* 5 L. J. Ex. Eq. 40; 160 E. R. 203; *reced.* without touching this point, *sub nom.* PORTUGAL. (1875), 33 L. T. 112.

**1085. Threat of criminal proceedings.**  
In an action on a bill of exchange, the deft. pleaded that the acceptor was threatened by the deft., that if it were not given he would make a criminal charge: *Held*: unless the bill was given by reason of such threat, it was not void.—*THOMPSON v. HOLLAND* 11 W. R. 260.

**Immediate parties.**

of C., in payment of an purchase

to chartered a by deft., & to him

by In the of the term: *Black v.*

*ding—Immediate parties.*  
In an action for the assault also having been brought against him, a settlement was effected by deft. C. giving a note indorsed by deft. H. for \$1,600 for the damages sustained by plff., a fine being inflicted for common assault & the indictment being dropped. The note was accepted by plff. at deft. C.'s instance, without plff. having demanded it or taken advantage of the imprisonment to procure it. In an action on the note, deft. set up duress:—*Held*: in the circumstances there was no duress.—*KENNEDY v. COLLIER* (1879), 20 C. P. 285.—CAN.

**1086 L. — Threat of criminal proceedings—Immediate parties.**—To an

by of bkpt.'s stock-in-trade, & to enable a to be paid. Prior to the giving of promissory notes, plff., by his agents, made defts., that

Debtors Act, 1869 (c. 62), could, & were to be, brought against C., who was the son of one deft. & nephew of the other, & defts. swore that they had believed those representations to be true, & would not have given the promissory notes, had they not so believed. In an action by the trustee against defts., as makers of the promissory notes: *Held*: judgment should be entered for defts., on the ground that they had been induced to enter into the contract by duress, & threats of criminal proceedings, & it was not necessary, that any particular charge under Debtors Act should have been specified, or any ground for such should have been stated in fact. *SEEKIN v. D. C.* 45 L. T. D. C.

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father to plff. At the time the bill was drawn, deft., a young woman of twenty-two years of age, was just of age, & at the age of twenty-two would come into £1,000 under her uncle's will, which contained a provision that if she charged her interest in the legacy in any way, the legacy was to be forfeited. The father being urgently in need of money, applied to plff., who found £130, on the understanding that the father gave a promissory note for £600, accepted by deft., & at her father's dictation deft. wrote to plff. that in a year's time she would come into the legacy of £1,000. Deft. refused to meet the bill, on the ground that she had been induced to sign it under duress by her father, who told her that, unless she did so, plff. would make him bkpt. & the family would be rendered homeless:—*Held*: as plff. was privy to the arrangement of the father's to obtain from his daughter, who had no independent advice, a money advantage for himself & the father, he obtained the bill in circumstances that prevented him from being a *bona fide* holder of the bill for value, & plff., whatever his rights against the father might be, could not recover against deft. *FRIEKE v. POWER* (1903), 48 Sol. Jo. 69.

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from deft., a who had no threat of giving would if th of in an T. L. R. C. A.

Father & daughter Holder with notice. Action on a bill of drawn by by de

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1069. Illegal detention of goods—Knowledge of illegality—Absence of consideration—Holder without notice. To the first count of a declaration by payee against maker of a promissory note for £20, payable on demand, deft. pleaded, that plff. was illegally possessed of deft.'s goods, & wrongfully detained same without any right so to do, & refused to give them up without deft. would make his promissory note for £20 payable on demand, & deliver same to plff., whereupon deft., in order to gain possession of his goods, made & delivered the note to plff. for the transmission, & deft. averred that except there never

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consideration for the making of the note:—*Held*: the plea was bad, as the plea should have alleged the circumstances in which the detention took place, or should have alleged expressly that plff. knew there was no colour or pretence for his detention of the goods.—*KRAHNS v. DURELL* (1848), 6 C. B. 596; 6 Dow. & L. 357; 18 L. J. C. P. 28; 13 Jur. 153; 136 E. R. 1382.

*Young v. Austen* (1869), L. R. 4 C. P.

—Effect on burden of proof of consideration.]  
Sect. 10, Sub-sect. 3,

**1070. Undue influence—Guardian & ward—Holder with notice.**—Two years & a half after B., a young woman, had come of age, A., who had been her guardian, & with whom she still resided, drew a promissory note in her favour, & she, at his request, indorsed it. Shortly afterwards a third person paid the note to his bankers, who knew that A. was insolvent & had been the young lady's guardian, & they, on the faith of the indorsement, paid a cheque which he had drawn in favour of A.:—*Held*: the bankers should be restrained from suing B. on the note, & she should not be ordered to pay the amount of it into ct.—*MAITLAND v. BACKHOUSE* (1847), 16 Sim. 58; 17 L. J. Ch. 121; 10 L. T. O. S. 243; 11 Jur. 1000; 60 E. R. 794; *affd.* (1848), 16 Sim. 63, L. C.

*Distd. Dettmar v. Metropolitan & Prov.*  
1 Hen. & M. 641.

**1071. Person *in loco parentis*—Payee with notice.**—Persons who pay money to a acting in *loco parentis*, by the direction of 1 of tender years, although of legal age, should that such persons understand the nature of the transaction, & that they had had indep advice.

the direction of A. & B., two young women the ages respectively of twenty-two & twenty-one, certain sums were advanced by the manager of a joint stock bank, & carried to their respective accounts with the bank. At the same time they gave a joint & several promissory note to the bank for £4,000 advanced to their uncle by the bank at their request, & that amount was carried to his account. Subsequently the uncle drew out, at various times, the greater part of the money, & used it for his own purposes. On the promissory note becoming due the bank sued A. & B.:—*Held*: the action should be restrained, & the security declared to be invalid.—*DETTMAR v. METROPOLITAN PROVINCIAL BANK, LTD.* (1883), 1 Hen. & M. 641; 3 New. Rep. 364; 10 L. T. 63; 71 E. R. 281.

**1072. — Parent & child—Payee without**  
—In an action on a joint & several note made by A. before her A. pleaded, on equitable grounds, that she was to make the note by & parental control of her father, for his sole & benefit, she being then young & that she never received any value for the

that plff. had full knowledge of the & that plff., by his attorney, colluded with A.'s father to exercise over her undue control for the purpose of inducing her to make the note. The jury found that A. did act under undue influence, & that the note was made for the sole use of her father, but that plff. had not notice of facts, & that there was no collusion those findings established the equitable plea, the allegation of collusion being immaterial, & it having been proved that the only adviser A. had in the transaction was the attorney of the lender of the money, to secure which the promissory note was given.—*MORRIS v. SHURMER* (1867), 16 L. T. 674, N. P.

**1073. — Husband & wife—Payee.**—A joint & several promissory note was made by a husband & wife. In an action brought upon it, the wife set up a defence that she had been induced by her husband to sign it, in ignorance of the real nature of the document. The jury having found in her favour:—*Held*: the finding of the jury was conclusive against plff.—*SANQUINETTI v. MESSITER* (1885), 2 T. L. R. 135, D. C.

*Compare No. 1114, post.*

**1074. — Dentist & patient—Immediate parties.**—After the death of A., a captain in the navy, who died at a very advanced age in Greenwich Hospital, B., a dentist, produced a bill of exchange for £202, alleged to have been given him by A., & stated at one time that £100, part of it, was for medical attendance, & the rest a gift, & at another time that there was a contract that he was to attend to A.'s teeth for the rest of his life, & supply him with teeth. B. indorsed the bill to C., to whom he owed about £14, on the understanding that C. should bring an action on it for their joint benefit. The action was tried, & counsel for plff. elected to be nonsuited:—*Held*: in all the circumstances an inference of fraud was to be drawn.—*ALLAN v. DAVIS* (1850), 4 De G. & Sm. 133; 20 L. J. Ch. 44; 16 L. T. O. S. 278; 61 E. R. 767.

**1075. — Doctor & patient—Immediate parties.**—Relief, on the principle of correcting abuses of confidence, given against the liability of the maker of a promissory note, taken from a poor patient on the occasion of a change in his position in life, by his medical attendant, without any rendered, & for an amount was due for his attendance, on scale of charges.

A bill sought to restrain deft. from proceeding to amount of a promissory note for £325 on the ground (1) plff. had signed it in the belief that it was for £25 only, & (2) it was given by plff., the patient, to his medical attendant, on the occasion of an accession of fortune to the family of the patient, without any account delivered, & for an amount more than would be due for medical on the most extravagant scale of On proof of the circumstances con- he second ground of relief:—*Held*: (1) was entitled to a declaration that the note

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# 172 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## SECT. 10.—PROOF OF CONSIDERATION.

### SUB-SECT. 1.—PRESUMPTION OF CONSIDERATION.

See 1882 Act, s. 30 (1).

**1076. General rule.**—Debt may be maintained on a promissory note, by payee against maker, though the instrument do not express that it is for value received, or for any consideration. So on a bill of exchange, by drawer, being also payee, against acceptor. *HATCH v. TRAYES* (1840), 11 Ad. & El. 702; 3 Per. & Dav. 408; 9 L. J. Q. B. 119; 113 E. R. 581.

*Mortimore & Schrader*

4 L. T.

**1077. No proof necessary.**—Note payable on demand. If a man receives a note for money payable upon demand, he need not prove any consideration.—*CRAWLEY v. CROWTHER* (1702), Freeman Ch. 257; 22 E. R. 1194.

*Mentid. Grant v. Vaughan* (1764), 3 Burr. 1516.

**1078. Onus on defendant to show no consideration.**—*HUBNER v. RICHARDSON* (1819), Bayley on

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the note, & having seen his bill,  
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D. Hare, 534 J. Ch. 472; 16 Jur.  
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*STURRING CO. v.*  
*R. 4 S. C. 467.*—CAN.

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B. sued L. on a bill for  
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to B. B. & A. had had many  
bill transactions. A owed him  
at the date of the bill. The bill  
had been regarded at the bank as one  
for value. A. was under the impression  
that B. was his creditor, but it was clear  
A. was his debtor to the extent of  
£600. L. failed to prove that the bill  
granted by A. to B. was an accommoda-  
tion bill:—*Held*: the acceptor of a bill  
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PART SECT. 10, SUB-SECT. 1.

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**1079.** ——. A person gave a cheque for the amount of a deposit on a sale by auction, which sale was void. In an action on the cheque he pleaded that there was no consideration for the cheque, & the plff. replied that there was consideration:—*Held*: on that issue deft. must begin.—*MILLS v. ODDY* (1834), 6 C. & P. 728, N. P.; *subsequent proceedings* (1835), 2 Cr. M. & R. 103.

*Annotations*.—*Reid*. *Easton v. Pratchett* (1835), 1 Gale, 250. *Morda*. *Doe d. Bowdler v. Owen* (1837), 3 C. & P. 110; *Keene v. Beard* (1860), 5 C. B. N. S. 372.

**1080** ——. Where the acceptor of a bill pleads that it was accepted without any consideration, & plff., the drawer, replies that it was accepted for a good consideration, the onus of proof lies on deft. to show want of consideration. It is otherwise where plff. in his replication specifies the particular sort of consideration, for which he alleges the bill was accepted.—*BATLEY v. CATTE-RAIL & HINDR* (1831), 1 Mood. & R. 379, N. P.

**1081.** ——. *Extent of.* In an action on a bill of exchange by third indorsee against acceptor, deft. cannot put plff. to prove consideration, by giving *prima facie* evidence to show the want of it, merely as between the drawer & his indorsee, & each subsequent indorser & indorsee, but he must also show the want of consideration as between himself & the drawer; & for this purpose, it is not enough to prove that the drawer, on the day before the maturity of the bill, procured all the indorsements to be made without consideration, in order that the action might be brought by an indorsee, on the understanding that the money, when recovered, should be divided between one of the indorsees & the drawer.—*WHITAKER v. EDMUNDS* (1831), 1 Ad. & El. 638; 110 E. R. 1351.

*Annotations*.—*Reid*. *Lewis v. Parker* (1836), 2 Har. & W. 46.

**1082.** ——. *MILLS v. BARBER*, No. 1127, *post*

**1083.** ——. In an action against the maker of a promissory note for £100, deft. pleaded that it was agreed between him & the payee, at the time of making the note, that the note was to be paid by his carrying goods for the payee, & that it was indorsed to plff. without consideration. Replication, that plff. gave a consideration of £49 for it:—*Held*: on that issue deft. must begin; & that if he offered no evidence, plff. was entitled to a verdict for £49.—*EDWARDS v. JONES* (1837), 7 C. & P. 633, N. P.; *subsequent proceedings*, 2 M. & W. 411.

*Annotations*.—*Morda*. *Robinson v. Powell* (1839), 5 M. & W. 479.

**1084.** ——. In an action by indorsee against acceptor of a bill of exchange, on replication *de injuria* to a plea by the acceptor that it was accepted for the accommodation of the drawer, & by him indorsed to A. without consideration for the purpose of raising money, & by A. fraudulently indorsed to C. without consideration, & by him to plff., without consideration, deft. must

prove the want of consideration from plff. to C.—*BROWN v. PHILPOT* (1840), 2 Mood. & R. 285.

*Annotations*.—*Dodd*. *Smith v. Braine* (1851), 16 Q. B. 244.

**1085.** ——. Where the acceptor or other party sued upon a bill of exchange pleads only that it was given for goods not delivered, or for some other consideration which has failed, deft. has a right to begin, but the whole onus of proof is upon him, & he is bound to satisfy the jury that the goods have not been delivered, or that the consideration has failed *in toto*, & if he does not prove this, except as to part, plff. recovers for the rest.—*CLARK v. HOLMES* (1860), 2 F. & F. 79.

**1086.** ——. To an action by drawer against acceptor of a bill of exchange, deft. pleaded that there was no consideration for the acceptance, concluding with a verification, and plff. replied that there was a consideration, to wit, the sale and delivery of goods, concluding to the country:—*Held*: (1) plff. was not bound to prove the consideration alleged, & it lay on deft. to show want of consideration; (2) if the replication had concluded with a verification, the consideration alleged would have been part of the issue, & plff. must have proved it.—*LOWE v. HUMPHREYS* (1835), 2 Ad. & El. 483; 1 Har. & W. 12; 4 Nev. & M. K. B. 360; 4 L. J. K. B. 80; 111 E. R. 187.

*Annotations*.—*Reid*. *Mills v. Barber* (1836), 1 M. & W. 475.

**1087.** Bill *prima facie* imports consideration. Bill accepted for cash & wine. Wine not delivered.—*Value as to balance assumed.* Assumpsit by indorsee against drawer of a bill of exchange, accepted by B. Plea, that B., being in want of a loan of money, applied to plff. to advance it, which he was unwilling to do, unless B. agreed to accept it in two-thirds money & one third wine, & unless plff. had the security of a bill drawn by deft. & accepted by B., that B. agreed to the terms, & thereupon the bill declared on was drawn by deft., & accepted by B., & that deft. never received any consideration or value, nor did any consideration move or pass from either of the said parties to deft. for his drawing the bill, except as aforesaid; & that the wine had not been delivered, & that the contract for the sale & delivery thereof was a gross fraud on deft.:—*Held*: bad on demurrer.

The plea is bad, as not answering the whole declaration. It only avers that the wine was not delivered; then we must assume that the money was paid, so that the plea is an answer only to one-third of the amount of the bill. The plea does not enable us to say what the fraud consists in, of what kind or nature it was (*PAULKE, J.*).—*COSNOP v. HOLMES* (1835), 2 Cr. M. & R. 719; 4 Dowl. 451; Tyr. & Gr. 85; 150 E. R. 304.

**1088.** Indorsement *prima facie* imports consideration.—An indorsement must be taken

**1087 I.** Bill *prima facie* imports consideration.—*Rebutted by writ or oath.*—*Held*: the presumption of onerousness in favour of the holder of a bill blank indorsed & delivered subsequently to its dishonour, & after diligence had been raised, can only be rebutted by writ or oath.—*PARRISON v. CAMPBELL* (1827), 5 Sh. (Cl. of Sess.) 206.—*SCOT*.

**1087 II.** ——. "*Renounce on payment of £50 cash.*"—In an action on a promissory note the defence was that

it was given merely as accommodation paper. Dft. admitted that when he signed the note, it bore upon its face conspicuously the words: "*Renounce on payment of £50 cash.*"—*Held*: deft. was liable.—*WALKER v. HENNINGST* (1817), 21 W. L. R. 609.—*CAN*.

**1087 III.** Note *prima facie* imports consideration.—*Extent of presumption.*—*Held*: payments made by excheq. to the payees of promissory notes signed by their testators, with notice that such

notes were made without consideration & were intended by testator as gifts to the payees, were not protected by the *prima facie* presumption. *Re WILLIAMS* (1854), 27 Q. B. 405.—*CAN*.

**1088 I.** Indorsement *prima facie* imports consideration.—*Baill v. ROBERTS* (1814), 26 Q. W. R. 322; 6 Q. W. N. 839.—*CAN*.

**1088 II.** ——. *Held*: In a suit by the assignee of a promissory note against

of circumstances tending to throw  
such indorsement lies on the party disputing its  
validity before the indorsee can be called upon to  
prove that he gave value for the bill (PARKER, J.),  
HEATH v. SANSON (1831), 2 B. & Ad. 201; 9  
L. J. O. S. K. B. 240; 109 E. R. 1151.

1 Mood. & R.  
N. C. 267.  
v. Edmunds (1834), 1 Mood. & R. 366.  
Stanley (1811), 2 Q. B. 117. **Reid.** Bassett v.  
D. 10 Bing. 40; Simpson v. Clarke (1815),  
D. 142; Isaac v. Farrar (1830), Tyr. & Gr.  
261; Mills v. Barber (1836), 1 M. & W. 425; M.  
v. Drake (1813), 7 Jur. 1015; Smith v. Braine  
16 Q. B. 211.

**Accommodation**  
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bill

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Tyr. & Gr.

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1090.

In *assumpsit* by the holder  
of a bill of exchange, the  
drawer indorsed to plff.

Deft. that the bill was drawn & accepted  
for | modulation, & handed to the drawer  
that | get it discounted, that the  
it in blank, & delivered it to A.  
who, against good faith, de  
it to plff. for a purpose unknown to deft. of  
which facts plff.

D. C. & P. N. P.

of presumption - Solicitor

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e, prove the consideration for the note.  
v. THOMAS (1837), 2 Y. & C. Ex.

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the circumstances the latter are not con-  
cerned with the question whether the  
assignment was for consideration or not.  
All that they are entitled to have  
ascertained is that plff. is the legal  
holder of the note & able to give them  
a good discharge. **HALLOW NAGAI v.**  
**BUNANI LAL** (1814), 1 L. R. 37 All. 90.  
—**DED.**

e. *Rebuttal of presumption*—Where  
admitted. The presumption that  
value has been given may be done  
away with in the case of notes which  
have had their origin in actual fraud,  
but not in the case of notes made

accepted by him, indorsed by drawer to C., & by  
C. to plff. Plea, that the bill was drawn for  
deft.'s accommodation, & was indorsed in blank  
by drawer & delivered to deft. that he might get  
it discounted for his accommodation, that deft.  
delivered it to M. to get it discounted & hand the  
proceeds to deft., that M. delivered the bill to  
C. that C. might get it discounted for deft., that  
C. in violation of such purpose & against good  
faith, & without the authority of deft. or M.  
indorsed to plff. without consideration, & that  
plff. held without consideration. Replication, *de*  
*injuria*. The bill was drawn for deft.'s accommoda-  
tion, & was by him delivered to M. to get it  
discounted for deft. M. gave the bill to C. to  
get it discounted for deft. C. took the bill away,  
promising to get it discounted & to bring back  
the money for it in a few hours, but did not return.  
Next day M. saw C., who promised to bring the  
money for the bill immediately. He then went  
away, professedly for the purpose of fetching the  
money, & had not been seen since; & deft. never  
received anything on account of the bill:—**Held**:  
that amounted to evidence that C., who indorsed  
to plff., was a *malâ fide* holder; & the jury might,  
if they thought right, infer from thence that plff.  
had not given value.—**SMITH v. BRAINE** (1851),  
16 Q. B. 211; 20 L. J. Q. B. 201; 16 L. T. O. S.  
483; 15 Jur. 287; 117 E. R. 872.

—**Conced.** Harvey v. Towers (1851), 6 Exch.  
Hall v. Featherstone (1858), 3 H. & N. 284. **Reid.**  
Wicklow & Wexford Ry. Co. v. Slattery (1878),  
3 App. Cas. 1155. **Mentd.** Fitch v. Jones (1855), 1 Jur. N.S.

1093. — **Exception to rule.**—A promissory  
note given by principal & surety for a definite  
sum, & payable on a fixed day, is presumed to be  
given in consideration of an advance at the date  
of the note; & if the payee asserts, as against  
the surety, that the object of the note was to  
secure payment of the balance of an account  
current between the principal & the payee, the  
burden of proof lies on the payee.—**Re ROYS,**  
**KEDES v. ROYS, Ex p. HOP PLANT**  
L. R. 10 Eq. 467; 39 L. J. Ch. 655.

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SUB-SECT. 2.

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Illegality — **RIDGEWAY v.**  
(1890), Q. R. 17 N. C. 176.

P. R. E. — **CAN.**

Indorsement in blank by

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AND **HARR**  
F. L. R.

203: 9 W. H. 982



*B. When Burden of Proof shifted.**a) Fraud, Duress, Force and Fear, or Illegality.*

See 1882 Act, s. 30 (2).

**1094. General rule.**—MILLS v. BARBER, No. 1127, *post*.**1095. Fraud pleaded—Burden of proof.**—To a declaration in *assumpsit* by indorsee against maker of a promissory note, deft. pleaded, that the note was indorsed & delivered to plff. by his indorser, in violation of good faith, & in fraud & contempt of an order for referring the claim of that indorser to arbitration, & that plff. took the note with full knowledge of the premises. Plff. replied that he had not, when he took the note, any knowledge of the premises in the plea mentioned: *Held*: deft. was bound to begin at the trial, & to prove plff.'s knowledge of the fraud, & plff. was not bound in the first instance to prove consideration given for the indorsement to him. —SMITH v. MARTIN (1842), 9 M. & W. 304; 1 Dowl. N. S. 418; 11 L. J. Ex. 129; 152 E. R. 120.*Annotations*:—*Reid*, Robins v. Maidstone (1843), 4 Q. B. 511; Carter v. James (1844), 13 M. & W. 137; Hogg v. Skedd (1865), 18 C. B. N. S. 426.**1096. Fraud proved—Burden of proof on plaintiff.**—When fraud is proved the burden of proof is on the holder to prove both that value has been given, & that it has been given in good faith without notice of the fraud. —TATAM v. HANLEY (1880), 23 Q. B. D. 345; 58 L. J. Q. B. 424; 6 T. L. R. 503; *sub nom.* TATHAM v. HANLEY 33 W. R. 100.**PART X. SECT. 10, SUB-SECT. 2.***a. Negotiation.*—New Zealand (1882 Act, s. 30 (2)). *Seem*: where a promissory note intended to be given to a third person is drawn by the maker to the order of the proposed indorser, handed by the maker to the indorser for indorsement, & indorsed & handed back by the indorser to the maker, the handing of it to the indorser for indorsement is its issue, & the indorsement & handing of it back to the maker is a negotiation, within 1882 Act, s. 30 (2). —HARRIS v. AUBOURN (1890), 18 N. Z. L. R. 449.—N.Z.**1095 i. Fraud pleaded—Burden of proof.** *Renewal note.*—D. through a canvasser purchased shares in E. Co., thinking he was purchasing direct from the co. through the co.'s agent. All the unissued shares had been sold at that time to A., Ltd., A. being the manager of both cos. In payment for these shares D. gave notes in favour of A., Ltd. These notes were indorsed over by A., Ltd., to E. Co. After the notes fell due D. renewed these notes by consolidating them into one & making that one payable to E. Co. *Held*: D. had not discharged the onus thrown upon him of showing that E. Co. were not holders in due course. —DUPLESSA v. EDMONTON PORTLAND CEMENT CO. (1918), 55 S. C. R. 623; 39 D. L. R. 756; 11 Alta. L. R. 35.—CAN.**1096 i. Fraud proved—Burden of proof on plaintiff.**—Proof of fraud in the making of a note casts upon plff., a third holder, the burden of showing that he is a bona fide holder for value. —WITHELL v. HURTON (1857), 7 L. C. R. 339.—CAN.**1096 ii.**—Where the transfer of a note by indorsement is made before maturity, but the evidence

shows that the note was obtained from the maker by fraud, &amp; that the holder was aware of the fraud, the onus of showing that he is in good faith falls upon the holder. —HILLGOMER v. BAXTER (1883), 6 L. N. 413. CAN.

**1096 iii.**—Proof that the holder has obtained the note by fraud not only destroys the presumption arising from the words "value received," but creates presumption that the assignee, or grantee, has not given value & is not the real owner. —BAXTER v. HILLGOMER (1883), 9 Q. L. R. 268.—CAN.**1096 iv.**—When a promissory note has been obtained from the maker by fraud & without valuable consideration, the third party, holder of the note, cannot recover the value except by proving that he received it before it fell due, in good faith, & for good & valuable consideration having been ignorant of the circumstances under which the note had been given. —BAXTER v. DUNN (1885), 14 R. L. O. 8. 495.—CAN.**1096 v.**—Deft. relying on a warranty by M., which he knew to be false, purchased from him a horse & gave him their notes for the price. M. had previously purchased the horse from plff. W. M. had expressly stated to deft. falsely, that no one else had any interest in the horse. Before the action W. had stated that he had not the notes & did not know anything about them. In action on the notes brought by W. & the bank to whom notes were specially indorsed:—*Held*: fraud being proved, the onus was upon the indorsers to show that they were holders in due course. —WILLIAMS v. CONNOR (1891), 7 W. L. R. 87.—CAN.**1096 vi.**—In an action upon a promissory note, where it is**1097.**—In an action by the indorsee of a bill of exchange if it appear that a prior party was defrauded out of it, plff. is bound to prove what consideration he gave for it. —RIGGS v. HEADPORT (MARQUIS) (1811), 2 Camp. 571.**1098.**—Where the acceptor of a bill of exchange, against whom an action had been brought by the holder, had given the latter notice to prove the consideration he had given for such bill, & letters of the drawer were given in evidence to show that the transaction between him & the holder was fraudulent: *Qu.*: whether it was incumbent on the holder to prove such consideration. —COSTEN v. MERRIST (1822), 7 Moore, C. P. 87.**1099.**—Where in an action on a bill of exchange it is pleaded that the bill was obtained by fraud, to which *de injurid* is replied, deft. will be allowed at the trial, after proving the fraud, to throw the onus upon plff. of showing consideration. —ISAAC v. FAIRBANK (1836), 1 M. & W. 65; 4 Dowl. 750; 1 Gale, 385; Tyr. & Gr. 281; 5 L. J. Ex. 94; 150 E. R. 348.*Annotations*:—*Poll.* Humphreys v. O'Connell (1841), 7 M. & W. 370. *Apud* Schild v. Kilpin (1841), 8 M. & W. 673. *Poll.* Scott v. Chappelow (1842), 4 Man. & G. 336. *Apud* Cowper v. Garbutt (1844), 13 L. J. Ex. 154. *Reid*, Griffin v. Yates (1836), 1 Hodg. 387; Watson v. Wilkes (1836), 7 Har. & W. 187; Jones v. Sculor (1838), 4 M. & W. 123; Hagan v. Arnold (1840), 9 M. & W. 550; Mitchell v. Cross (1842), 10 M. & W. 367; Gibbons v. Mottram (1843), 6 Man. & G. 697; Herbert v. Sayer (1844), 5 Q. B. 265. *Mentz*, Purchell v. Satter (1841), 1 Q. B. 197; Polly v. Rose (1844), 12 M. & W. 436.**1100.**—Direction to jury. In an action by indorsee against acceptor of a bill of

shown that the negotiation of the note was a fraud on deft., the burden of proof is on plff. to prove both that value has been given &amp; that it has been given in good faith without notice of the fraud. —NORRIS v. BOUTNEY (1912), 22 W. L. R. 732. CAN.

**1096 vii.**—Plff. sued upon a promissory note made by deft. in favour of a co., & indorsed in the name of the co., by its officers to plff. The note was given for stock in the co. Dft. had been induced to sign the note by fraudulent misrepresentations made by the co.'s agent. *Held*: the onus was upon plff. to prove that he in good faith gave valuable consideration therefor. —KERN v. TAMPLEY (1914), 27 W. L. R. 608. CAN.**1096 viii.**—A promissory note made by deft. payable to the order of B. Co. was indorsed by B. Co. to plff.; the note was a renewal & arose out of an agreement between deft. & the co. under which the note was given for a particular purpose & the action of B. Co. in putting off the note was a fraud upon deft. *Held*: the onus was upon plff. to prove that they were bona fide holders, for value without notice. —PENNOCK (J. C.) CO. v. WILLIAMS MACHINERY CO., LTD. (1916), 34 O. L. R. 493; 8 O. W. N. 84, 379.—CAN.*a. Fraudulent circumstances a matter of public notoriety.*—Where deft.'s signature to a promissory note was obtained by fraud in circumstances which, in the opinion of the ct., were matter of public notoriety at the time the note was transferred to B., for whom plff. was *per se* nam. *Held*: it was incumbent on plff. to prove that B. gave consideration for the note. —KEMMOR HARRIS OF CANADA v. CANE (1887), 11 M. L. R. 3 Q. B. 61; 15 R. L. O. 8. 254.—CAN.

, to which deft. pleads that the bill was by fraud, & that it was indorsed to plff. without consideration, to which plff. replies *de injuria*, although the latter allegation is necessary to render the plea good, proof of the fraud casts on plff. the onus of proving consideration.

Upon the trial of such an issue, it is not the duty of the jury, as a preliminary fact, to decide whether fraud is sufficiently proved, to cast on the plaintiff the burden of proving consideration, but only whether there is evidence of fraud for the jury, & it is correct for him to direct them, that, if they find the fraud proved, in the absence of proof to the contrary, the bill is void. *Per Lord Tenterden* (1851), 6 Exch. 650; 20 L. J. 17; 17 T. O. S. 109; 15 Jur. 544. *Ex. 318*; 17 T. O. S. 109; 15 Jur. 544. *Ex. 318*; 17 T. O. S. 109; 15 Jur. 544.

*Foundation*  
H. & S. 15 N. 8. C.

**Bill for special purpose Dis-**  
**on a bill of**

by A. to C., who  
of A. to C., who  
to C., who  
Plea, that the bill was  
of deft., & for  
I. & was  
delivered to deft., that before the bill  
def. delivered it to W., who  
& held it for the purpose of it  
discounted for deft. over it  
to deft., or of ref. same, that W. did  
get the bill disc. or pay over any  
him, or return the bill, but delivered same to

the  
of W., without any consideration or value  
bill to that there was any  
for deft.'s or the  
the part of  
showing that the bill was drawn as an  
bill, & that W. had received it in the  
& for the purpose alleged in the  
that had indorsed it to C. for the of  
it discounted, who I to  
at a  
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in favour. v. BRAINE  
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18 N. E. L. R. 440.

—*Fold. Harvey v. Towers*  
*Hall v. Featherstone* (1858), 3 H.  
Jones (1855), 1 Jur. N. S. 834  
& Wexford Ry. Co. v. Slattery

6 Exch.  
N. 244. *Beld.*  
Dublin,  
App. Cas.

1155.

1102. — To a declaration on a bill of exchange drawn by A. upon B., deft., & indorsed by A. to C., & by C. to D., plff., deft. pleaded, that there never was any value or consideration for the acceptance of the bill, or for the drawing or indorsement thereof by A., that A.'s indorsement was in blank, that, after the bill was drawn & accepted by deft., he gave it to E. for the special purpose of getting it discounted for him, & paying over the proceeds to him, that E. did not get the bill discounted, or pay over the money to deft., but, in fraud of deft., & contrary to the special purpose, & without the consent of deft. or of A., delivered the bill to some person to deft. unknown,\* that C. never gave any value or consideration for the indorsement of the bill to him, & that there never was any value or consideration for the indorsement to plff. A second plea was the same as above, down to the asterisk, then as follows: "that C., before & at the time of the indorsement of the bill to him, had notice of its having been obtained from deft. by fraud, & that plff., before & at the time of the to him, had notice that the bill been obtained from deft. by fraud." Evidence having been given by deft. at the trial, that the bill had been drawn & accepted as alleged in the i, & that deft. had been defrauded of it by E., the judge ruled that enough had been proved to call upon plff. to show that E. had given value for the bill, & plff.'s evidence failing to satisfy the jury, who, in answer to questions put to them by the judge, found that the bill had been

from deft. by E., that plff. was cognizant of the fraud, & that he gave no consideration for the bill, a verdict was entered for deft. upon both the ruling was correct, &

proved.—*BERRY v. ALDERMAN* (1853), 14 C. B. 95; 23 L. J. C. P. 34; 22 L. T. O. S. 1; 1 W. R. 334; 2 C. L. R. 600; 139 E. R. 40. *Hall v. Featherstone* (1858), 37 L. J. Ex.

1103. — action on a bill of exchange, proof of any such of suspicion as might be left to the jury as evidence of fraud in the original negotiation of the bill will be sufficient to call upon plff. to prove that he is a holder for value.

the defence pleaded was that the bill by deft. for the purpose of its being for himself, & that he never had con- for it, & that in fraud of deft. it was plff. without any consideration for

the — *Held*: proof that the first ll to get it discounted for deft., it discounted for himself, representing that it was drawn for his own

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Ptff. sued on two out of three bills of exchange each for £100 13s. 4d. accepted in the firm name by C., a partner in the firm of C. & H. At the time of the acceptance there was no drawer's name, but they were brought to ptff. by B. to be discounted. Ptff. wrote to C. & H., & received a reply in C.'s writing that the bills were in order. He then filled in his name as drawer & discounted the bills for B. for £144 each. H. pleaded that the bills were accepted by C. for his own purposes without authority & accommodation bills. Neither C. nor B. called at the trial:—*Held*: the onus lay on to show that he gave value in good faith for bills. *OAKLEY v. BOULTON, MAYNARD & CO.* (1888), 5 T. L. R. 60, C. A.

**1111. Fraud not proved—Burden of proof not shifted—Agent misappropriating bill.**—An agent the sale of goods was authorised to draw bills the purchasers at the usual credit, & by the of he was to transmit to his

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for

own of debt., a bill-broker, proof of those ent evidence of fraud connected with debt. to make it incumbent on him to show that he gave full value for the bills.

*DAVIS v. WILLIS* (1836), 1 Har. & W. 679; 5 L. J. K. B.

**1112. Accommodation bill—Mere suspicion insufficient.**—Where a bill of cepted for the accommodation of acceptor must do more than throw on the manner in which the bill had from the drawer, & in order to title of the holder, & call on him to be must show direct fraud. *v. LENTHALL* (1848), 12 L. T. O. 8, 273.

**1113. Duress proved—Onus on plaintiff.**—In an action by indorsee against drawer of a bill of

consideration, & under it, it was to him it became 100, N. P.

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**1111. Fraud not proved—Burden of proof not shifted—(Continued.)**—In an action upon a promissory note made by debt., who failed to show such evidence of fraud or illegality to constitute with the issue or negotiation of the note as to deprive ptff., who discounted the notes, of their prima facie status as holders in due course. *Held*: ptff. were entitled to recover. *MARSHALL v. BANK v. MCLAREN* (1910), 11 W. L. R. 341. *CAN.*

**a. Forgery not proved—Burden of proof.**—In an action on a promissory

who found a verdict for ptff.:—*Held*: as debt. had put his defence on the ground of forgery, ptff. was not called upon to prove the consideration. *MARSHALL v. BANK* (1833), N. B. 124, 123 (8). *CAN.*

**1113. Duress proved—Onus on plaintiff.**—A note made by debt. under threats of arrest made by the party ultimately came into the hands of ptff. The trial judge found for debt.:—*Held*: it should be presumed from this verdict that the trial judge found that ptff. had failed to satisfy

so alleged, & the jury found that there was such but no evidence was given on debt.'s part to show that ptff. knew of the duress, but on the contrary she stated in evidence that she did not think that ptff. knew of it. Ptff. was not called a witness, & did not give evidence to negative his knowledge of the duress:—*Held*: the onus of proof with regard to knowledge of the duress by ptff. lay upon debt., & was not shifted by 1882 Act, s. 30 (2) upon ptff., & ptff. must succeed.—*TALBOT v. VON BORIS*, [1911] 1 K. B. 854; 80 L. J. K. B. 601; 104 L. T. 524; 27 T. L. R. 266; 55 Sol. Jo. 290, C. A.

*Compare No. 1073, ante.*

**1115. Illegality—Burden not shifted—No proof that plaintiff implicated.**—Although the consideration of a bill of exchange in its creation may have been illegal, yet that does not entitle the acceptor, except in the cases of usury & gaming, to call upon a remote indorsee to prove the consideration on which he had it, unless he can be implicated in the original transaction, & be proved to have been privy to it.—*WYATT v. BULMER* (1797), 2 Esp. 538, N. P.

*Annotations*:—*Dodd*, *Simpson v. Clarke* (1835), 5 Tyr. 593. *Reid*, *Mills v. Barber* (1836), 1 M. & W. 425.

**1116. Through alleged agent.**—

In an action by holder against one who had indorsed a bill for the accommodation of the drawer, the drawer proved that he had applied to J., step-father of ptff., to get the bill discounted, that J. went away, & returned with £32 less than the amount of the bill, the discount being £1 10s.:—*Held*: not sufficient, without proof that J. was ptff.'s agent, to cast it on ptff. to prove the consideration he gave for the bill.—*BASSETT v. DODDIN* (1833), 10 Bing. 40; 3 Mor. & L. 417; 2 L. J. C. P. 259; 131 E. R. 820.

**1117. No admission or proof of illegality.**—*Assumpsit* by indorsee against maker of a note. Plea, that the note was given for a gaming debt, & indorsed to ptff. with notice thereof, & without consideration. Replication, that the note indorsed to ptff. without notice of the illegality, for a good & sufficient consideration:—*Held*: a pleading the illegal making of the note was not so admitted as to render it necessary for ptff. to any evidence of consideration, but, in him to do so, debt. ought to have ality by evidence.—*EDMUNDS v.* 2 M. & W. 612; 5 Dowl. 775; 1 Jur. 592; 150 E. R. 914; , *Murph. & H.* 211.

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## PART 2

*v. James* (1844), 5 Jur. 912. *Mont. Fearn v.* (1844), 7 Man. & G. 312.

### 1118. — Burden on defendant to show notice

—In an action by indorsee against acceptor of bill of exchange, deft. pleaded that the bill was accepted for a debt from which he was discharged under Insolvent Debtor's Act, 1826 (c. 57), of which pltf. at the time of the indorsement had notice, & that the bill was accepted to induce the drawer not to oppose the discharge of deft. under that Act, of which at the time of the indorsement the pltf. also had notice. Pltf. in his denial of the notice stated in each of the pleas: *Held*: on the issues deft. must begin, & the burden of proving that pltf. had notice was on deft. *WARNER v. HAINES* (1834), 6 C. & P. 606, N. P.

**1119. Illegality proved—Burden on Usury.** — In an action by indorsee against acceptor of a bill of exchange, where deft. proves usury in the concoction, or in a previous transfer of the bill, pltf. must prove himself a *bona fide* holder, though he has received no notice to prove consideration. — *WYAT v. CAMPBELL* (1827), Mood. & M. 80, N. P.

**1120.** — Where, in answer to an action on a bill of exchange or promissory note, deft. pleads that it was illegal in its inception, pltf. took it without value, to which pltf. is injured, the burden of proof is on the pltf. that it was legal.

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*Aranda*  
*Reid*

24 L. J. Q. B. 10  
C. B. 10

331, 16 H  
J. C. P. 34;

H. N. S. 426.

**1121. Illegality admitted—Burden of proof on plaintiff—Money lent in gaming house.** by holder against maker of a draft or order for that

to be by deft., & given to B. in a gaming house for money lent to play with, & delivered by B. to pltf., who had full knowledge of the circumstances, that the draft was given in the circumstances stated above, & that B. gave the draft to pltf. without any consideration

no notice, & that pltf.

such an admission by pltf. of the draft, as called upon him to give consideration for it. — *HI* (1841), 2 Q. B. 117; 1 Gal. 237; 10 L. J. Q. B. 319; 6 Jur. 389; 114 E. 47.

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a holder in due course was on pltf. Pltf. the two cheques for H., who, pltf. knew, for whom had cashed several other

all been met. It was admitted that the of the cheques in question was affected with *Held*: pltf. was entitled on the evidence he had of ng that subsequent to the illegality value in good faith for the cheques. — *C. BENNETT* (1913), 20 T. L. R. 475.

**1. Illegality pleaded—Burden of proof not shifted—Absence of consideration only proved—Gaming.** — Where a bill or note is shown to have illegality or fraud, a

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to pltf.: *Held*: there being a mere want of in the inception of the note under Act, & no illegality or fraud, deft. was to show that pltf. took it without value. — *C. JONES* (1855), 5 E. & B. 238; 24 L. J. Q. B. 25; 1 T. O. S. 100; 1 Jur. N. S. 854; 3 W. R. 597; 3 C. L. R. 1220; 119 E. R. 470.

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4 T. L. R. 741.

— B. C. R. 474.

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C. 199; Q. R. 6 H. C.

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# 180 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

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or Failure of

**1124. Absence of consideration—Burden of proof shifted.** Old rule. —In an action by indorsee against acceptor of a bill of exchange, if deft. show that there was originally no consideration for the bill, it then lies on the other party to show that he or some previous indorsee gave value for it. —**THOMAS v. NEWTON** (1827), 2 C. & P. 606, N. P.

*Obtd. Jacob v. Hingate* (1834), 1 Mood. & R. 445; *Conrad v. Simpson & Clarke* (1855), 2 Cr. M. & R. 342; *L. Miller v. Barber* (1876), 1 M. & W. 425.

**1125. Burden of proof not shifted—Bill for purpose Discounting.** —The fact of a bill been accepted to raise money for the use of the payee having appropriated the money for his own use, is not sufficient to

call upon a subsequent indorsee to show that he gave value for the bill. —**JACOB v. HUNGATE** (1834), 1 Mood. & R. 445, N. P.

*Annotation:—Conrad v. Smith v. Braine* (1851), 16 Q. B. 244.

**1126. ——— Accommodation bill.]**—Where the maker of a promissory note pleads, that he had no value or consideration for the making of it, & this is traversed generally by plff., the latter is not bound to prove the consideration, until deft. has shown the want of it. —**LACEY v. FORRESTER** (1835), 2 Cr. M. & R. 59; 3 Dowl. 668; 5 Tyr. 507; 4 L. J. Ex. 138; 150 E. R. 25; *sub nom.* **LACY v. LACEY**, 1 Gale, 139.

**1127. ———.]—Assumpsit by** against acceptor of a bill of exchange. Plea, that deft. accepted the bill for the accommodation of the drawer, & that the drawer did not give, nor did he, deft., receive, any consideration for his

PART X. SECT. 10, SUB-SECT. 2.  
B 5.

In action on a note,

to plff. by way of  
Held: the  
plff. to show  
for the note  
(1865), 10 L. J. Q. B. 101.

1124 in  
the bill of exchange  
of land which

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fish in which he  
WATERMAN v. MCGILL  
R. & C. 74 CAN.

e, which was  
& discharge  
to sued upon, but which note  
in the hands of R. & O. with-

of forged —Held: the  
of the weight of

plff. had been paid in full. The onus  
of proof was on plff., he chose to let  
suit lie for a number of years, in  
se circumstances he should have  
ved his claim with more than usual  
& this he had not done. —  
**EMERSON HANDEL** (1905), 2 W. L. R. 100, CAN.

— Action not maintain-  
parties to bill.

In an action by  
acceptor of a bill where  
had notice, that, as between the  
& the action could not  
be maintained. —  
*Held: plff. should be*

out on proof of consideration: plff.  
to prove consideration, was  
lost. —**NEWTON v. NEWTON**  
1 Ann. M. & O. 228. —IR.

Action by

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L. N. 8.

the indorsee against

**1. Forgery pleaded —**  
*Issues of plaintiff in bringing suit.* —  
An action on certain promissory notes,  
alleged by plff. to have been made by  
H. the elder & H. the younger on  
May 12, 1887, was brought in 1888 but  
allowed to stand. In 1889, H. the  
elder, the only deft. possessed of means,  
died. His exec. was made a party deft.  
in

that on May  
the notes

as his

of

without consideration, or after  
maturity. —**HOWARD v. SHAW** (1846),  
9 L. L. R. 335. —IR.

**11251. ——— Bill for special  
purpose.]**—In an action upon a pro-  
missory note, deft. admitted the mak-  
ing of the note, & said that he left it with a co. to  
be used by them in procuring an  
advance from plffs., the payees, for the purposes  
of the co., & that the note was, instead,  
deposited with plffs. by the co. as  
security for past advances: —*Held:*  
the onus of the defence lay on deft. —  
**ONTARIO BANK v. YOUNG** (1901), 21  
C. L. T. Occ. N. 565; 2 O. L. R. 761. —  
CAN.

**1. Note given in  
payment of insurance premium—**  
*ultimately forfeited.* —A promissory  
note was given to the agent of an  
insurance co. in payment of a first  
premium on a policy; a policy was  
issued & sent to the insured & retained  
him, containing provisions to the  
effect that the insurance should not  
take effect or be binding until the first  
premium had been paid to the co.,  
or a duly authorized agent; also, that  
if a promissory note or obligation were  
given for the premium, & should not  
be paid at maturity the policy should  
be in force while the default con-  
tinued, but the party should be liable  
on the note: a verdict having been  
given for the agent of the co. on the  
note, deft. applied to set it aside on  
the ground that there was no con-  
sideration: —*Held:* deft. (applt.) was  
to show affirmatively that the  
note was wrong. —**RASTFORD v. RASTFORD**  
(1901), 35 N. B. R. 100.

CAN.

11261.

not to  
NATIONAL  
v. ONTARIO COAL CO.

**112611. ——— No plea of  
illegality or fraud.]**—Plffs. sued defts.  
on a promissory note executed in  
proper form, given in favour of Y., &  
indorsed by him to plffs. The note  
was given to Y. for his accommodation  
& was entirely unauthorized. Defts.  
argued that plffs. were bound to prove  
that they were holders in due course: —  
*Held:* without a plea of illegality or  
fraud such defence could not be main-  
tained. —  
It was for plffs.  
value of

Dominion  
R. 542.



## PART X.—CONSIDERATION.

or paying the bill, that the drawer the bill without any consideration, & that plff. held the bill without consideration.

2. that the drawer indorsed the bill to itf. for a good & valuable consideration:—*Held*: was not incumbent on plff. to begin, & prove in first instance, that he gave value for the bill, but the rule was otherwise where the title of the holder was impeached on the ground of fraud, duress, or that the bill had been lost or stolen.—*MILLS v. BARBER* (1836), 1 M. & W. 125; 5 77; 2 Gale, 5; Tyr. & Gr. 835; 5 L. J. Ex. 150 E. R. 500.

—*Consol. Re Boyer, Crofton v. Woodgate* (1836), 35 L. T. 391. *Re Woodgate v. Field* (1842), 2 Harv. 211.

1128. ——— Where, in an action on a bill of exchange, the plea shows the bill to have been an accommodation bill, but does not show fraud in its inception, plff. is not bound to begin by going into proof of consideration.—*LEWIS v. PARKER* (1836), 4 Ad. & El. 838; 2 Har. & W. 46; 6 Nev. & M. K. B. 204; 5 L. J. K. B. 170; 111 E. R.

**Partial absence. Burden of proof on defendant to impeach holder's title.**—Action by indorsee against indorser of a for £500. Plea, except as was made & delivered to that he might indorse it for the of the maker, to enable him to obtain advances of thereon, that plff. had only advanced to amount of £200, & that there was no consideration for the residue. Replication, that plffs. were the holders of the note for good & valuable consideration, given to the maker in respect of their the holders of the note to the full amount th —*Held*: it was not incumbent upon plffs., in the first instance, to prove the consideration given for the note, but it was necessary for deft. to & impeach plffs' title. —*PRINCIVAL v. (1835)*, 2 Cr. M. & R. 180; 3 Dowl. 748; 5 Tyr. 579; 4 L. J. Ex. 139; 150 E. R. 78.

*Annotations*: —*Reid, Isaac v. Farrar* (1836), Tyr. & Gr. 231; *Mills v. Barber* (1836), 1 M. & W.

As defence to

1, sub-

**Failure of consideration—Burden of proof not shifted.**—*Qu.*: whether even if the acceptor proved a total failure of consideration as him & the drawer, it is incumbent on an to prove he gave  
LENT (1830), 10 H. 877; L. & Welsb. 320; 5 Man. & Ry. K. B. 8 L. J. O. S. K. B. 269; 100 E. R. 674.

defence to  
sect. 2,

IN REGARD TO

1131. Oral evidence—To show inadequacy of consideration—Immediate parties.] Deft. w given of a , cannot give the inadequacy of the in evidence, with a view to diminish the damages, but he may give it in evidence as a indicatory of fraud in order altogether.  
(1815), 1 Stark. 51, N. P.

— To show partial consideration —Im- mediate parties. —An acceptor of a bill, in an brought by the payee, may show that it for value as to part, & as an as to the rest. —*DARNELL v. (1815)*, 1 Stark. 106, N. P.

1133. ——— To show absence of Immediate parties.]—Notwithstand tory validity given to promissory notes by 3 & 4

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LIVINGSTONE (1861), 300; 31 Sc. Jus. 144.

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plff. deft. pleaded that the con- of the note was the first annual premium on a life policy for \$1,000, & that the annual premiums were not to exceed that amount; that the policy offered was at an annual premium of \$315.—*Held*: the burden of proof was upon deft. that there was want of consideration.—*ALEXANDER v. TAYLOR* (1860), 3 Steph. Q. Dig. 116, 117 (55).—CAN.

1130 H. ——— Discounting.]—In an action on a promissory note dis- counted with plff. deft. pleaded failure of consideration. There was no evidence that plffs. were not holders in due course & it was admitted that value for the note:—*Held*:

### X. SECT. 10, SUB-SECT. 3.

11331. Oral evidence—To show absence of consideration.]—Parol evidence is admissible to deny the receipt of value for a bill or note, but not to vary the engagement to pay.—*DAVIS v. McMANUS* (1860), 7 L. J. Q. B. 490.—CAN.

1133 H. ——— ———]—In an action upon two promissory notes defts. set up want of consideration. At the trial defts. tendered evidence, which was refused, to show that the notes were given merely as receipts for stock which had been delivered to defts. for sale as agents, that there was no consideration for the notes: *Held*: whether or not evidence was admissible to show that the notes were given as receipts, defts. were entitled to give in evidence all the facts which would tend to establish want of consideration.—*CLARK v. Union Stock Yards* (1860), 9 Q. W. R. 400; 10 O. L. R. 102. CAN.

10. of consideration: Sub-sect. 3.  
Secta. 1, 2 & 3.]

Anne, c. Held: evidence was admissible of want of  
Gibb. Ch. 154; 25 E. R. 108.

1134.

to contradict the consideration or  
of a bill or note, but not the terms of the instrument  
Foster v. JOLLY (1835), 1 Cr. M. & R.  
5 Tyr. 239; 4 L. J. Ex. 45; 149 E. R. 1263;  
HUTCHINSON v. NIBLEY, 1 Gale, 10.

Consid. Abbott v. Hendricks (1840),  
Mass. R. 1179; Abrey v. CUNA (1869), L. R. 5 C. P. 3  
Murray v. Smith (1895), 39 Sol. Jo. 559. Held. Brown  
v. Ogley (1842), 12 L. J. C. P. 61; Young v. Austen (1  
L. J. C. P. 213. Held. r. Wordley (1  
Tyr. & Gr. r. Kenyon (1842), 3 Q. B.  
Hobbs v. r. (1843), 1 Dow. & L. 375; Spartali v.  
C. B. 212; Dunmore v.  
(1851), 1 C. L. R. 19; Nichols v. Barrett (1854), 23  
L. T. O. S. 111; National Assn. v. Assn. r.  
H. W. B. 939; New London Credit Syndicate v. Seale  
L. T. Q. B. 825

Abbott v. I

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1137. Remote parties - Declaration by  
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him to maker, but did not call the  
a witness, he was present:—Held: the  
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White, & C. 325; 6 Dow. & Ry. K. B.  
379; 3 L. J. O. S. K. B. 107 E. R.

r.

Lee v. Harrison (1826), 5 L. J. O. S. Ch.  
orton (1827), 3 C. & P. 179; Woolwa  
(1834), 1 Ad. El. 114; Nash v. De Freville,  
2 Q. B. 72.

Absence of consideration as defence to action,  
. 8, sub-sect. 1, ante.

— To show for what consideration note  
given—Immediate parties—Statement by third  
person in absence of plaintiff.]—What is said by a  
third person at the time of the signing of a pro-  
missory note, as to the consideration for which it  
is given, is not evidence, in *assumpsit* by payee  
against maker, against the payee, if he was not  
present.—HEALEY v. JACOBS (1827), 2 C. & P.  
; subsequent proceedings, 5 L. J. O. S. K. B. 180.

1139. — To show total failure of consideration  
— Immediate parties—Action by & against execu-  
tors. —In an action on a promissory note payable  
on demand, & expressed to be for value received,  
brought by the exors. of A. against the exors. of  
B., defts. adduced evidence to show that B., being  
very ill, made his will, & stated that he had left A.  
£100 for his trouble in acting as his exor., that  
se days after A. said to B. that as he was to  
e £100 for acting as his exor., it would save  
the legacy duty if B. would then sign a promissory  
note for the amount, which B. did. B. recovered  
A. died in the lifetime of B.:—Held: the  
evidence was admissible, as showing a total failure  
of consideration.—SOLLY v. HINDE (1834), 2  
Cr. & M. 516; 4 Tyr. 305; 3 L. J. Ex. 151; 149  
E. R. 865.

Annotation.—Consid. Abbott v. Hendricks (1840), 10  
L. J. C. P. 51.

Failure of consideration as defence  
Sect. 8, sub-sect. 2,

1140. — To show illegality of consideration—  
Immediate parties.—In an action by the payee of  
a promissory note, expressed to be "in considera-  
tion of the payee's care & medical attendance

to show consideration to have been

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3 F. C. J. of  
8 S. L. T. 245.—SCOT.

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1138 III.—  
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(1844).

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furnished & services performed as an  
, & if that was proved, that plff. could  
not recover without showing that he had obtained  
his certificate under Apothecaries Act, 1815  
(c. 194), s. 21.—*BLOOM v. PINKER* (1824), Ry. & M.

**Remote**  
by payee.]—In an action by  
of a promissory note, decl  
not uttered at the time of making the note, are  
not evidence to prove that the consideration for  
the note was money lost at play, unless it be  
previously shown that the indorsee is identified  
in interest with the payee, as by having taken the  
note after it was due, or without any consideration.  
—*BEAUCHAMP v. PARRY* (1830), 1 B. & Ad.  
L. & Welsh. 334; 8 L. J. O. S. K. R. 307;  
E. R. 720.

*Reid. Phillips v. Cole* (1839), 2 Per  
Illegal or void

1142. — To contradict consideration stated on  
note.—Immediate parties. —A widow gave a  
missory note "for value received by my  
husband"; *Held*: debt. was not at liberty  
a defence, that it was given as an  
liabilities incurred on behalf of her  
, & that the payer had not seen  
T. v. *BRISTOW* (1830), 1 Cr. & J.  
Tyr. 81; 9 L. J. O. S. 48; 148 E. R. 1404.  
v. *Waterworth* (1838), 6 Dowd

684. *Duff. Nelson v. Berio* (1839), 4 M. & W. 195.  
*Moseley v. Hanford* (1830), 3 Man. & Ry. K. R. 607.

1143. Written evidence.—To show partial con-  
parties.]—On an issue  
was given by plff. for a  
g that he was  
for money, are evidence for debt.—*HOMAN*  
v. *THOMPSON* (1834), 6 C. & P. 717, N. P.  
6 C. & P.

1144. — To show absence of consideration—  
Remote parties.]—A written memorandum, given  
by the drawer to the acceptor of a bill of exch  
stating, that the bill is drawn altogether for  
accommodation, & that he will save his acc  
harmless against it, is evidence to show that the  
bill was an accommodation bill, even in an a  
or brought by a bond  
v. *TOOME* (1841), 5 Jur. 370.

1. Statement as to consideration on bill.  
Effect of.]—In an action on a promissory note,  
be "for value received in

but no was  
not re on plff. to put in did  
tract in  
order to establish  
Car. & M. 502, N. P.; *subsequent proceedings*, 10  
M. & W. 131.

See, further, Part XXII., Sect. 11, sub-sect. 4,  
& Part XXV., Sect. 4.

## Part XI.—Negotiation and Transfer.

### SECT. 1.—WHAT INSTRUMENTS ARE NEGOTIABLE.

Part II., ante; Part XX., post.

Kir. , N. P.;  
not  
2  
B. 433.

### 2. —INSTRUMENT PAYABLE TO BEARER.

See 1882 Act, ss. 8 (3), 31

### —INSTRUMENT PAYABLE TO ORDER.

(2 Act, ss. 8 (1) (4) (5), 31 (3), (4).

1147. Indorsement & delivery necessary.]—A  
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11 C. L. R. 44. 3 Ir. Jur.

PART XI. SECT.  
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PART XI. SECT. 2.

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*Sect. 3.—Instrument payable to order. Sect. 4.]*

by him delivered to plff., cannot be treated as a promissory note drawn in favour of plff., but an indorsement must be averred as well as delivery.

—*PREYOT v. ABBOTT* (1814), 5 Taunt. 786; 128 E. R. 101.

1148. — In an action against the acceptor of bills of exchange made payable to the order of the drawer, a declaration alleging that the drawer indorsed the bills to S. & F., who delivered them had on general demurrer, inasmuch as by S. & F., as well as delivery, was to entitle plff. to sue the acceptor.

—*WHITKHEAD* (1837), 3 Bing. N. C. 63; 3 Hodg. 182; 5 Scott. 31; 6 L. C. P. 255; 132 E. R. 629.

—*Ramsay v. Crowe* (1847), 1 Exch. 167.

1149. — Indorsement may be subsequent to L. was, in July, 1892, restrained by from "negotiating, pledging, or disposing of" certain bills of exchange, which were to order. He had, previously to that, deposited with Y. the bills to secure a debt, & in Oct., 1892, while the injunction was still in force, he, at the request of Y., indorsed one of the bills. On a motion to commit L. & Y. for contempt of ct., on the ground that the bill had negotiated contrary to the injunction:

by the indorsement in Oct., 1892, the bill was for the first time "negotiated" within 1882 Act, s. 31 (1), & there had been a contempt of ct.—*DAY v. LAINGHURST* (1893), 12 L. J. Ch. 334; 68 L. T. 17; 41 W. R. 283; 37 Sol. Jo. 175; 3 R. 231.

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1150. Transfer without indorsement—Action in of payee.—A. wishing to obtain credit bankers, in 1817 prevailed upon three to join him in a

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his

for him with

on account for same;

A.

the co. to accept an application for shares in his name. The B. Co. indorsed the cheque in C.'s name & sued S. on it:—*Held*: the cheque was not as

1147 II. — In an action for non-payment of a cheque the fourth count alleged the drawing of a cheque payable to the order of the U. Bank, who presented it, etc. Defs. pleaded that the bank did not indorse the cheque to them, & refused to indorse it:—*Held*: the plea was good.—*TOWN v. SIX BANK OF LOWER CANADA* (1894), 1 Man. L. R. 119.—CAN.

1147 III. — Plff. was the transferee of two notes, accepted by his employer & entered in part settlement of a note of £250, given by deft. in consideration of a thousand shares of the capital stock of a state co. Plff.'s declaration alleged that the notes were delivered to him for value received, & that he was the sole, true & lawful bearer & proprietor of the said notes, but there was no allegation of any indorsement to plff. by the payee, whose name appeared on the notes as having been crossed.—*Held*: plff. had not proved the title under which he held the notes, & the allegation that they were delivered to him by the payee was not sufficient to constitute him the creditor, the notes not being payable to bearer & no indorsement from the payee to plff. being alleged.—*HARR-*

STRAD v. DRUMMOND (1859), 10 L. C. R. 17.—CAN.

b. Transfer without indorsement—*Cheque drawn to "A. B., or order, or bearer."*—A banker's cheque drawn in favour of A. B., or order, or is a negotiable document which will pass without indorsement.—*BARRE v. HAYWOOD* (1882), 2 E. D. C. 153.—S. AF.

a. — Action by transferee for value.—*Accommodation bill.*—In an action for the amount of a bill of exchange by the transferee for value against the acceptor, defendant pleaded that as the bill was an accommodation bill pursuer had no higher right against him than the drawer of the bill who had given no value for it. The bill though held by pursuer for value had not been indorsed on transference by the drawer, who had since become bkpt.:—*Held*: (1) under 1882 Act, s. 31, pursuer had a title to sue although the bill was not indorsed; (2) although the bill was an accommodation bill it was a good obligation binding on defendant as he had accepted it in order that the drawer might raise money

Upon two of the partners retiring from the banking house a balance was struck between the old & the new firm, & the promissory note was delivered to the new firm, but not indorsed to them:—*Held*: an action on the note, same not having been indorsed, was properly brought in the name of the payees of the note.—*PEASE v. HIRST* (1829), 10 B. & C. 122; L. & Welsb. 81; 5 Man. & Ry. K. B. 88; 8 L. J. O. S. K. B. 94; 109 E. R. 396.

—*Consd.* *Dry v. Davy* (1839), 10 Ad. & El. Henniker v. Wigg (1843), Dav. & Mer.

1151. — Action against acceptor—Bill returned for indorsement—Lost by transferor.—B. accepted a bill of exchange drawn by R., made payable to R.'s order, who sent it to plffs. They returned it for indorsement to R., who burned it, & became bkpt. Upon a bill by plffs. asking that B., as acceptor, might pay the sum for which the bill was drawn:—*Held*: plffs. had no claim for relief against the acceptor, & the bill must be dismissed with costs.—*EDGE v. BUMFORD* (1862), 31 Beav. 247; 31 L. J. Ch. 805; 7 L. T. 88; 9 Jur. N. S. 8; 10 W. R. 812; 54 E. R. 1133.

—*Mentd.* *Whistler v. Forster* (1863), 14 C. B. N. S.

1152. — Transferee acquires same title as transferor had.—The holder without indorsement of a draft payable to order, though taken by him *bonâ fide* & for value, has no better title than the person from whom he took it, & such holder is "tainted by fraud, of which he has notice before he obtains the formal indorsement.—*WHISTLER v. FORSTER* (1863), 14 C. B. N. S. 248; 2 New Rep. 73; 32 L. J. C. P. 161; 8 L. T. 317; 11 W. R. 648; 143 E. R. 411.

—*Consd.* *Currie v. Misa* (1873), L. R. 10 Exch.

1153. *Mentd.* *Austin v. Bunyard* (1865), 6 B. & S. 687; *Hull v. O'Sullivan* (1871), L. R. 6 Q. B. 209; *Gatty v. Fry* (1877), 2 Ex. D.

1153. — S. drew a cheque payable to C., at the request of a co. promoter, in order that the B. Co. might go to allotment on the minimum capital being raised. C. was an existing, but it was never intended that he should the cheque, & it was only drawn to induce the co. to accept an application for shares in his name. The B. Co. indorsed the cheque in C.'s name & sued S. on it:—*Held*: the cheque was not as

upon it.—*HOOD v. STEWART* 27 L. R. 657.—SCOT.

invalid—Whether re-indorsement necessary to plff. a promissory note payable on demand. Plff. indorsed the note to a third party, who sued deft. on the note on his refusal to pay. Deft. pleaded an agreement between the payee & himself which the payee had not performed, & the suit was dismissed. Plff. thereupon paid the indorsee & took back the note, which, however, was not reindorsed, & instituted the present suit against deft., who pleaded that the property in the note was not vested in plff. so as to enable him to maintain the suit:—*Held*: although the property in a promissory note payable to order on demand passes by indorsement delivery, the indorsement in this case had been declared invalid in the suit referred to, & must therefore be treated as cancelled, & consequently the property in the note was vested in plff. at the date of the suit so as to enable him to maintain it.—*MARINCHY v. PILLAI & KUMARASAMI* (1893), L. L. R. 17 Mad. 197.—

between S. & C. without consideration, & since C., as the holder of a cheque to his order for value, had transferred it to pltf. co. for value, they had the same right as C., & a right of action by the transfer & were entitled to recover against S.—**EDINBURGH BALLARAT GOLD QUARTZ MINE CO., LTD. v. SYDNEY** (1891), 7 T. L. R. 656.

to put transferor's name on bill.]—The drawer of a bill payable to his order it, & gave it to the discount with intent to transfer to him all his rights in of the bill, but did not indorse it, though he would have done so if asked:—*Held*: the discount had no authority to put the drawer's name on the back of the bill.—**HARROP v. FISHER** (1861), 10 C. B. N. S. 196; 30 L. J. C. P. 283; 7 Jur. N. S. 1058; 9 W. R. 607; 142 E. R. 426.

Right to indorsement of transferor.]

Of executor—After of transferor.]—See Sect. 15, sub-sect. 2.

Of trustee in bankruptcy—After ruptoy of transferor.]—See Sect. 15, 2,

1155. When transfer by grant under manual sufficient.]—In *assumpsit* against exors.,

& to pay J. or order on demand delivered the to him, whereby, pay, but did not pay, & at the time of his was indebted to J. for the amount of the secured by the note, & interest. It that afterwards, & after the death of J., in the note being & unsatisfied, to wit, on

., before A., one of the coroners for the county of N., it was found, upon view of the body of J., then & there lying dead, by the oaths of honest & lawful men, of, etc., that J. feloniously did kill & murder himself, as by the inquisition before the coroner remaining of record more fully ap- by reason of which inquisition, & by of the felony, J. forfeited to the King the note & the money due thereon. The

King's sign manual to pltf. of the note & due thereon, as mentioned in a certain inquisition, & that His Majesty delivered the to pltf., of which defts., after the death of had notice. Breach, non-payment by testator or

to L. or of or as it or To an action on note deft. pleaded that it was not by L. who had in 1; but the amount if pltf. was ot. to be the lawful holder. In

that further deft. to in

the note to 21 L. C. J. 31.

of —*Held*: the person is equal tion of the m

1156 L.

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transfer that it WARD v. Q. R. 3

1156 H. — H., director of a co.,

The in on a L. in form. ut was the officials of the of it, & paid v. H. knew the note was dis- counted, & before it fell due had in writing acknowledged his liability on it. In an action on the note by the bank against H.:—*Held*: although, in the note was not negotiable, the bank, in equity, was entitled to re- v. H. being shown that the note intended by the makers to have

defts. since his death. Plea, that there was no such grant as alleged in the declaration (1) the grant under the sign manual was to pass the property in the note; (2) as the declaration alleged that testator was, at the time of his death, indebted to J., the note, in the principal & interest it sufficiently appeared that the note w for debt, & the debt urity the Crown by of law, were by the Crown without indorsement.—1 TAYLOR (1825), 4 B. & C. 138; 6 Dow. & Ry. K. B. 188; 3 L. J. O. S. K. B. 100; 107 E. R. 1010.

v. Toole (1867), 11 Cox. C. C. 75. I. Dood, Watt v. Morris (1855), 1 Hodg 215, 5 Dowl. 755; Gwynne v. Burnell (18 Bing. N. C. 453.

1. Effect of omission of "or order."—If a promissory note, of which he was holder, to pltf., in discharge of a debt for sold & delivered. In the direction to pay, the note did not contain the words "or order": *Held*: the note was a nullity, pltf. having no remedy upon it against the antecedent parties, for want of the words "or order."—**PLIMLEY v. WESTLEY** (1835), 2 Bing. N. C. 210; 1 Hodg. 324; 2 Scott, 423; 5 L. J. C. P. 51; 182 E. R. v. Herbert (1830), 5 Ad. &

Part VIII., ante.

#### SECT. 4.—RIGHTS OF HOLDER.

Act, s. 38.

Sect. 15, sub-sects. 4 & 5, VIII., Sect. 4, sub-sect. 3, ante.

1157. When available Must have & interest in bill Holder suing as for drawer who paid bill.]—If the drawer of a bill to his own order indorses it, & it dishonoured, the drawer, having received it & paid the amount to his indorsee, may return the bill to such indorsee for the purpose of his suing the acceptor upon it as trustee for the drawer, & the payment is no answer to an by such indorsee, if there be evidence that the drawer paid, the bill was left in the hands of dorsee for the purpose of its being put in **WILLIAMS v. JAMES** (1850), 15 Q. B. 498; L. J. Q. B. 445; 15 L. T. O. S. 226; 14 Jur. 117 E. R.

Act, 1890, s

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PART XI. SECT. 4.

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(1866), 6 All.



4. *of Holder.*

1155. — In an action upon a bill for £500, it appeared that plff. had consented to lend his name for the purpose of suing the cheque, but never had possession of it,

was not maintainable as plff. never had any interest in the instrument upon which he

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H. &

and

1156. — A person sue on a bill of exchange in which he has no of which he has no

In an action on a bill of exchange plff.

first indorser against deft. as acceptor, & deft. traversed the indorsement, & pleaded that plff. was not the holder of the bill at the time of the of the suit. The bill had, after

acceptance, been indorsed by the drawer to A., who gave it to B. for value, but without indorsement, saying that he would guarantee the payment. The exor. of B., unwilling to sue on the bill himself, applied to A. to see it paid, whereupon it was agreed between them & plff. that the latter should sue on it in his own name, & A. took a copy of the bill from the exor., & delivered it to plff. for that purpose. An action was then commenced, & the bill given to him:—*Held*: both pleas were proved.—**EMMETT v. TOTTENHAM** (1853), 8 Exch. 884; 22 L. J. Ex. 281; 21 L. T. O. S. 240; 17 Jur. 509; 1 W. R. 372; 1 C. L. R. 201; 155 E. R. 1612.

*Annotations*:—**Dint** v. Parnell (1859), 7 C. B. N. S. 282; **Jenkins v. Tongue** (1860), 29 L. J. Ex. 147. **Edw.** **Ancora v. Marks** (1862), 7 H. & N. 686. **Mentl.** **Embricos v. Anglo-Austrian Bank**, [1905] 1 K. B. 677.

1160. — *Holder paid before action brought.* *Assumpsit* by payees of a foreign bill against s. Plea, that the bill was sold by

11561.

after its

&

by

G. paid it & sued deft. of partners in the firm of C. & Co. The jury found generally for plff. but found specially that G. had released C. & Co. On rule a verdict for deft. on the grounds that there was no indorsement to enable plff. to sue:—*Held*: there

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to 71, 4 W. W. & A'H. 159. — **AUS.** 158 vi.

U. W. S. 13. **CAN.**

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1158. — *City* he the maker afterwards paid the amount of the note to the

plff. he stood in the same as

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1158 ix. — At the time action was brought, the sued on, made by defts. payable to on demand was in the hands of a as collateral security. Plffs. afterwards took up the note:—*Held*: plffs. had no title to sue. — **PURE COLOUR CO. v. O'SULLIVAN** (1907), 10 O. W. R. 313. — **CAN.**

1158 x.

a in hands of holder for In an action on a note to plff. or bearer, brought in the of plff. under the Division (As. Act, C. S. I. C. (c. 19), s. 152, by a person who had obtained execution against him in that etc., defts. pleaded, among other pleas, that plff. was not the legal holder. The note had been seized by the bailiff in the hands of one T., to a plff. had handed it for collection. — *Held*: defts. were entitled to on the plea, for plff. was not in fact the holder. — **MCDONALD v. MCDONALD** (1861), 21 U. C. R. 62. — **CAN.**

1158 xi.

plea. — In an action by the payee of a bill against the drawer, deft. pleaded that plff. at the commencement of this suit, was not the holder, without

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U. C. R. 373.

1158 xii. — *Deft.* the of replication.)

the bill, upon a

plff. replied that commencement of the action he of

plff. bill, but did not

defts. to C. on one foreign post day, on the of being paid according to usage on next foreign post day, that C. purchased the bill as agent for H., & remitted the bill to pliffs. as such agent, & pliffs. received it for collection for H., that, before the next foreign post day, C. failed, & did not pay the price, that there was no value as between C. & H., or as between C. & pliffs., & that pliffs. were holders without value. *De injuria*. C. was a London merchant, & pliffs. Paris merchants, both correspondents of H., an American merchant. H. was indebted to both C. & pliffs. Pliffs. wrote to H. for a remittance. H. sent to C. a bill on London, for an amount exceeding H.'s debt to C., desiring him to realise it, pay himself his own account, & remit the balance to pliffs. C. realised the draft, credited H. with the proceeds, & bought of defts., in the ordinary course in London, a bill, for the amount of the balance due to H., which bill was to be drawn by defts. payable to pliffs.' order, to be delivered by defts. to C. in London on one foreign post day, & paid for to them by C. on the next. The bill in question was drawn, & delivered to C., & sent by him to pliffs., who, by letter to C., acknowledged the receipt on account of H., & stated that they would advise H. thereof. Before the next foreign post day, after the delivery of the bill to C., C. failed. Defts. never received anything for their bill; they protested the drawee not to honour it, & it was dishonoured. After-

H. paid pliffs. in full. The action was in the of pliffs. for H.'s benefit:—*Held*: pliffs. were holders for value, as they held the bill at the time of its dishonour on account of the debt from H. in, & the subsequent assignment of the interest to H. did not affect pliffs.' right to sue at law.—*POIRIER v. MORRIS* (1853), 2 E. & B. 89; 22 L. J. Q. B. 313; 17 Jur. 1116; 1 W. R. 349; 1 C. L. R. 429; 118 E. R. 702.

—*Held*. *Currie v. Misa* (1875), L. R. 10 Exch. 2; *Chappell* (1869), 20 L. T.

**1161. — Ratification of unauthorised action.**—An action may be maintained by a person as the holder of a negotiable instrument, notwithstanding he has no real interest in it, & never was the actual holder. If it has indorsed & delivered to some person professing to act as his agent, although without his knowledge, & he subsequently adopts the acts of the agent, that is sufficient title, although such title is after action brought in his name without his knowledge.—*ANCONA v. MARKS* (1862), 7 H. & N. 686; 31 L. J. Ex. 163; 5 L. T. 753; 8 Jur. N. S. 516; 10 W. R. 251; 158 E. R. 645.

41 Ch. D. *Durant v. Roberts & Co.*  
1 Q. B.

**1162. — Bill sent to another to get accepted.** A person indorsing a bill in blank, & sending it to a friend to get accepted, is not precluded from bringing an action in his own name.—*CLARK v. PIOT* (1898), 1 Halsk. 126; 91 E. R. 118; *sub nom.* *CLARK v. PIOT*, 12 Mod. Rep. 192.

*Bellamy v. Marjoribanks* (1857), 7 L. R. 1; *Smith* (1866), L. R.

**1163. —**  
A bill of

**Bill retained by acceptor.]—**payable to the order of A. is alleging any order made, & it is sufficient to declare that A. delivered the bill to deft., which he accepted, & by reason of the promises & according to the custom of merchants became liable to pay the contents to A., without alleging a redelivery of the bill by deft., for if a redelivery, or something tantamount to show the assent of the drawee to charge himself, be necessary to an acceptance, the demurrer, by admitting the acceptance, impliedly admits the redelivery, etc.—*HATHORN v. McCLURG* (1804), 5 East, 476; 2 Smith, K. B. 43; 102 E. R. 1153.

**1164. — Bill in possession of trustee in bankruptcy of payee.]—**A. deposited with B. a banker, a promissory note as a security for —*Held*: B. was entitled to recover on it, although before it became due, he parted with the possession to enable A. to procure payment from the maker, & although the note remained in A.'s hands till his bkpcy., & then came into the possession of his assignees. *BUTCHER v. HURLEY* (1816), 1 Stark. 23, N. P.

**1165. — Bill in possession of three as trustees of bankrupt — Bill originally indorsed to two of them & others as bankers for estate.]—**A bill of exchange was, by the direction of the payee, indorsed in blank, & delivered to A., B. & Co., bankers, on the account of the estate of an insolvent, which was vested in trustees for the of his creditors:—*Held*: A. & B., two of

not, conjointly with a third trustee, who was a member of the firm, maintain an action the indorser, without some evidence of the transfer of the bill to them as trustees by the firm, by delivery or otherwise.—*MACHILL v. [?]* (1810), 1 Stark. 409, N. P.

T O S. P.

**1166. — Bill in possession of for plaintiff.]—**Where plff. was not, at the when deft. was arrested, in possession of the of exchange on which the action was brought, but it was in the possession of persons to whom plff. was indebted, & to whom he had indorsed it but it appeared that those persons only held bill as trustees for plff., & that they were

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to be discharged out of custody.

*v. HERR* (1834), 2 Cr. & M. 416; 2 Dowl. L. J. Ex. 135; 149 E. R.

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**1167. — Not after notice of fraud** A. fraudulently obtained a bill or cheque to order, from B., & handed it to C. in of a *bona fide* debt, but without indorsing it: *Held*: C. could not acquire a legal title to instrument, by obtaining A.'s he had received notice of the *v. FORTER* (1803), 14 C. B. N. S. 248;

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plff.

&

that

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Sect. 4.—

2 New Rep. 73; 32 L. J. C. P. 161; 8 L. T. 317; 11 W. R. 648; 143 E. R. 441.

*v. Misa* L. R. 10 Exch.  
*1172. Austin v. Sullivan* (1871), L. R. 6 Q. B. 399; *Gatty v.*

**1166. Who may sue—Bearer of instrument payable to particular person or bearer.**—The bearer to a particular person or bearer, an action thereon in his own against the maker. *NICHOLSON v. SEDGWICK* (1897), 1 Ld. Raym. 180; 3 Salk. 67; 91 E. R. 1010.

*an action*

(1764), 3 Burr.

**1169.**

The bearer of a bill of "payable to ship F. or bearer" an action against the drawer. *GRANT v. VARDHAN* (1764), 3 Burr. 1516; 1 Wm. III. 485; 97 E. R. 957.

*Huck, 31*

*Cobb*  
*H. N.*  
*m. 74*  
*k. r.*

*v. Pole* (1820), 4 R. Ald. 1;  
 L. R. 10

*Rehmanland Exploration Co. v.*

174;

*Ty.*

**1170. Several indorsees—Bill indorsed in blank.** Whether necessary to prove partnership.

several of a bill of in blank, that they or that the bill was jointly.—*ORD v.* (2), 3 N. P.

**1168**

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*Mo* (1784), L.

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*v. STRICKLAND CAN.*

3 O. R. 217.

although the property is payable to order by indorsement & on demand must

in the note vests in the indorser so as to enable him to an action on it.—*MARIMUTHU v. KRISHNANAMI CHETTI* (1893), L. L. R. 17 Mad. 197.—*END.*

**Reindorsement by subsequent indorser cancelled.**—In an action by the holder of a promissory note signed by a firm against one of the partners, it appeared that the note bore the indorsement of the payee (the holder) in favour of a bank, & that the subsequent indorsement by the bank was cancelled. On exception to the summons upon the ground *plff.* was not the legal holder.—*Held*: the exception should be allowed without prejudice to *plff.*'s right to apply for leave to amend his summons.—*COOK v. HODGKIN MIA* (1912), 33 N. L. R. 13.—*S. AP.*

**Bill stamped with name of bank.**—*Plffs.* to establish a petitioning creditor's debt produced a bill of exchange drawn by *def.* & indorsed by him. The stamp of a bank also appeared on the bill. It was objected that this was presumptive evidence of the bill having been discounted by the bank & therefore that no petitioning creditor's debt was established.—*Held*: there was no substance in the objection.—*MOLAY v. SYMONT* (1832), Glouc. 131.—*IR.*

*CAN.*

**1171. Indorser.** After (assignment of indorser.) Action on four notes against the signature of an insolvent firm which had entered into a composition of thirty-five cents in the dollar. The composition was carried out by the notes indorsed by *def.*, being delivered to the assignees for the benefit of the parties concerned, but the bank not having filed a claim in time their claim was included in the notes given for the claim of the indorser, who was also insolvent. They now sought to get the benefit of the indorsement pro tanto on the notes of the indorser. *Def.* pleaded that there was no *bona fide* debt between them & *plff.*, & that their indorsement was only in favour of the indorser who had no claim.—*Held*: the bank was entitled to recover.—*BLAKE v. MONTAGUE* (1889), 3 L. N. 231.—*CAN.*

**1172.** After assignment of *def.*—The indorser of a bill of exchange

as indorsees of a bill, indorsed in blank, are not bound to prove any partnership.—*RORDASNZ v. LEACH* (1816), 1 Stark. 446, N. P.

Where

as indorsees of a bill of exchange, sued the drawer in their own right, & it appeared that the bill had been indorsed to them in blank, before the death of one of the firm, who was a partner with *plffs.* as bankers:—*Held*: (1) the action was well brought without their describing themselves as surviving partners in the declaration, as they were not bound to prove the partnership, or that the bill was indorsed or delivered to them jointly with their deceased partner; (2) *secus* if the bill had been specially indorsed.—*ATTWOOD v. RATTENBURY* (22), 6 Moore, C. P. 579.

**1173.** Assumpsit on a bill of exchange, alleged to be indorsed by *def.* to *plff.* Plea, that the bill was indorsed by *def.* in blank, & by him delivered to C. for the special purpose that C. should get it discounted for *def.*, & for no other purpose, that *def.* received no consideration from C., that C. got the bill discounted by *plff.* & W. jointly, who delivered the money, being their joint money, to C., as the consideration for the delivery of the bill to them by C., that C. delivered the bill to them jointly, & not to *plff.* solely, or with the intention of giving him a separate right of action, that *def.* received no from *plff.* solely, & that the only a received by *def.* & C., or either of the joint discount:—*Held*: had, on them, the joint discount:—*Held*: had, on gener. Q. B. 392; 1 Dav. & Mer. 223; 13 L. J. Q. 57; 2 L. T. O. S. 147; 8 Jur. 174; 114 E. R. 1250.



**Action against prior indorser—**

**After payment in equal proportions.**—If several persons, not partners in business, separately indorse, for the accommodation of the drawer, a bill of exchange, which has been previously indorsed by another person, &c., on the bill being dishonoured, pay the person who has discounted it in equal proportions, they may strike out their own indorsements, & bring a joint action against such previous indorser, to recover the amount of the bill.—*LOW v. COPESTAKE* (1828), 3 C. & P. 300, N. P.

Right to strike out indorsement generally, see s. 15, sub-sect. 5.

**1175. — Administrator of To whom bill indorsed after death.**—An agent having money in his hands belonging to his principal, purchased with it a bill of exchange, which he indorsed specially to his principal. The latter at the time of the indorsement was dead, but that fact was not known to the agent:—*Held*: the property in the bill passed to the administrator of the principal, & he might sue upon the bill in that character.—*MURRAY v. EAST INDIA CO.* (1821), 5 B. & Ald. 204; 108 E. R. 1107.

*Annotations*:—*Reid*, *Blades v. Free* (1829), 7 L. J. O. S. R. B. 211; *Fuller v. Mackay* (1853), 2 E. & B. 373; *Bateman v. Mid. Wales Ry. Co., National Discount Co. v. Mid. Wales Co., Overend, Gurney v. Mid. Wales Ry. Co.* (1866), Har. & Ruth. 308. *Mentz*, *Tolson v. Kaye* (1823), 3 Brod. & Bing. 217; *R. v. Okford Fitzpayne* (1839), 9 L. J. O. S. M. C. 12; *Cowper v. Godmond* (1835), 8 D. & W. 745; *Ward v. Shaw*

*v. La Mousse* (1834), 1 My. & C. 118; *Rhodes v. Smethurst* (1838), 4 M. & W. 42; *Goldstone v. Tovey* (1839), 6 Bing. N. C. 98; *Davieson v. Stanley* (1841), 2 Man. & G. 721; *Webster v. Kirk* (1852), 17 Q. B. 944; *Thomson v. Harding* (1853), 2 E. & B. 650; *Curlew v. Mornington* (1858), 27 L. J. Q. B. 439; *Sturgis v. Darrell* (1859), 4 H. & N. Credit Funder of England (1873), L. R.

A.

**1176. Holder of note as In name of trustee of bankrupt.**—Bkpt. having for a debt than the amount of note, without the to bring an action on the note the in the & undertaking to account for the —*Re SALISBURY* 407. *Annotation*:—*Dodd* 364.

**1177. — Payees of note To secure loan to them & others.**—Where a promissory note is given to two members of a loan society, by to secure an advance made the society, it is not necessary, in suing upon the note, to join the whole of the members of the society *v. HOWELL* (1841), 3 Man. & G. 638; N. R. 331; 6 Jur. 37; 133 E. R. 1206.

*v. Bowen*  
N. H. R. 144. —CAN.

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# 190 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

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1178. --- Agent to sue for holder--- Bill indorsed in blank.---Where a bill is indorsed in blank, it is competent to the holder to hand it over to a third person to sue upon it on his behalf.

The manager of an association established under

7 & 8 Vict. c. 110, and also carrying on the of a deposit & discount bank, *bond fide* received from a customer a bill of exchange indorsed in blank:---*Held*: it was competent to him to sue upon it in his own name only, without the indorsement of the bank, although he was a partner & shareholder in the concern, it appearing that it was a part of his duty as manager to keep possession

him a note payable to himself, individually, for recovery on the that the from the common  
CAN. v. THOMPSON (1834), 4 Q. 236.---CAN.

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on a promissory note pleaded that the made by him in favour of firm since insolvent, that into of the firm, it did

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sued by his next friend to recover the balance due on a promissory note alleged to have been made & delivered on account of his estate to his mother & guardian who

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right of mother, whom of the

IRWIN (1833), 2 Ir. L. Rec. N. S. IR.

for & to  
prejudice. Bines v.  
M. L. R. 2 S. C. 14 R. L. O.

he was going to place it with a banker, & he had better direct him to collect it. P. never gave any direction to collect it, & did not, before commencement, authorise the action, but he subsequently ratified it, stating he would have authorised it in the first instance if he had been asked to do so:---*Held*: P. was entitled to recover as holder.---  
POTTER v. MORRISSEY, POTTER v. CREAGHAN (1901), 35 N. B. R. 465.---CAN.

g. --- Agent for collection---*Indorser*.---The indorsee & holder of a promissory note for collection may recover thereon against the maker & indorser.---MILLS v. PHILBIN (1848), 3 It. de L. 255.---CAN.

h. --- *Cheque debited to after dishonour*.---L. having sent cheque to D. in payment for goods intermanded the payment of it on of their bad quality. D., upon receipt of the cheque, had indorsed it & deposited it to his credit with G., who, in his turn, had debited the cheque in his book, whence he had to withdraw it a short time account of the of payment by the bank where it drawn. G. then charged the che to the account of D., who had no funds sufficient to pay it. In an action brought by G. against L.:---*Held*: G. having charged the to the account of D., & having him thereof, had ceased to be the owner of it, & had no longer any right of it.---  
L. - GARAND v. LAM  
R. 25 S. C. 380.---CAN.

of a holder, for collection only, of a bill of exchange against the acceptor & are personal to himself, as the of the owner, & are not

TAYLOR & MARSON (1908), Q. R. S. C. 31.---CAN.

k. --- *Note payable to party*.---In an action by the of a bill against the acceptor, the was amended by the in-

he declaration other- remained unaltered. The on the bill was to the st.  
: plff.

Crow. & D. Abr. C. 141 -IR.  
Note payable to

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Stat. 9 Geo. 4, c. 81, in its it may proceed to recover the although no such officer as chamberlain be in existence  
CULL & TOWN & HARBOR OF KINFAIR (1842), 2 Leg. Rep.

HUTTEN (1863), 22 U. C.

trustees of school

of & to realise the securities which came to his hands in that character.—*LAW v. PARNELL* (1850). 7 C. B. N. S. 282; 29 L. J. C. P. 17; 1 L. T. ; 6 Jur. N. S. 172; 8 W. R. 6; 141 E. R. 825.

### 5.—RIGHTS OF HOLDER IN DUE COURSE.

Part X., Sect. 5, *ante*; 1882 Act, ss. 29, 30, 38.

### 6.—NEGOTIATION OF OVERDUE AND DISHONOURED INSTRUMENTS.

#### 1.—OVERDUE.

2 Act, ss. 36 (2)–(4), (86) 3.

#### A. *Promission*

#### Overdue

1882 Act, ss. 36 (3),

1179. When "deemed to be overdue"—Note payable on demand.—A promissory note, made to the payee, "or order, with interest,

could not recover on the notes for they were payable to the treasurer not to pliffs., & were not negotiable. *INTO TOWNSHILL v. McBRIDE* (1860), 1 C. R. 13.—CAN.

p. — Note not indorsed.—*Promissio to pay.* A promise to pay a note to the holder, which is not indorsed is sufficient to enable the holder to recover if the drawer knew that it was not indorsed.—*ALWYN v. CHURCHILL* (1820), 2 H. de L. 30.—CAN.

q. — Accommodation party.—*Taking up bill of maturity.* When a party put his name on a bill at the instance of the drawer, for the purpose of giving it currency, & afterwards took it up; he never had possession of the bill until it had arrived at maturity.—*Held*: he was not precluded from suing the acceptor.—*FULTON v. WATERMAN* (1836), 8 Ir. Jur. 238.—IR.

r. *Right of holder.—To collateral security.* A tradesman sold goods to customers, taking promissory notes for the notes & also hire receipts by which the property remained in him till made. The

*To sue for original debt.* Though note had in form.) When a promissory note is taken from a borrower as collateral security for money lent to him, & not in payment, an action can be brought for the money lent, notwithstanding that, owing to the form of the note, an action thereon could not be maintained.—*SEACON v. GRAY* (1901), 22 C. L. T. 27; 30 L. R. 34.—CA

#### PART XI. SECT. 6, SUB-SECT. 1. A

1179 I. When "deemed to be overdue"—Note payable on demand.—A note payable on demand that has been presented for payment & dishonoured, is not overdue, so as to effect an indorsement without notice with defects of title attaching to it.—*VOILES v. QUINCY* (1899), 20 N. S. W. L. R. 136.—AUS.

1179 II. — *Assembly*: A note payable on demand is, after demand of payment & refusal, to be treated as overdue.—*SMITH*.

Kerr, 89.—CAN.

1179 III. — *Molecular motion* v. PARENT (1910), 18 K. L. N. S. 435.—CAN.

on demand," cannot be treated as at the time of indorsement, without proof of presentment & dishonour.—*BAROON v. WHITE* (1825), 4 B. & C. 325; 6 Dow. & Ry. K. B. 370; 3 L. J. O. S. K. B. 227; 107 E. R. 1080.

114. *Edm. Nash v. Lee v. Hart* (1821), 3 C. & P. 2 Per. & Dav. 286.

1180. — *—*—A

on to affect an indorsee with any indorser, merely because it is a number of years after its date, & no interest had on it for several years before such

L. J. Ex. 51; 152 E. R. 7.

H. v. J. R.

B.

2 Act, ss. 36 (4).

bill overdue." If a bill of

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*Ch. v. WELLS* (1908), 29 N. C. R.

b. — *Cheque paid in by post five days after date.* M's account at pliffs' bank was overdrawn. On May 23 he posted to pliffs. a cheque of W & Co, dated May 16, with instructions to place the amount to his credit, which pliffs. did on receipt on May 26, thus leaving a credit balance in M's favour. On the same day pliffs. sent this cheque for collection to the clearing house, but it was returned dishonoured on May 27. W & Co, having stopped payment on May 23.—*Held*: the interval between May 16, the date of the cheque, & May 23, the date of its being mailed to pliffs., was not, in the circumstances, sufficient to give the cheque the character of an overdue bill.—*BANK OF BRITISH NORTH AMERICA v. WARRER* (1909), 14 O. W. R. 373; 15 O. L. R. 287.—CAN.

#### PART

1180 L. —

*overdue—Adaptability.*—In an action promissio

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not presented by an indorsee for payment until a year after it is due, the law will raise a presumption that it was indorsed after it became due, & the indorsee will be affected by the same liabilities as the drawer.—*LEWIS v. DAVIS* (1824), 3 L. J. O. S. R. B. 38.

1182. — Where two indorsements of the party appeared on a bill of exchange, with an intermediate one of another person:—*Held*: the first indorsement must be presumed to have been made before the bill became due.—*FRYER v. BROWN* (1824), Ry. & M. 145, N. P.

1183. **Burden of proof.**—*Assumpsit* by one against acceptor of a bill of exchange. Plea, that the bill was an accommodation bill, indorsed to plff.'s indorser for the purpose of its being discounted for deft.'s use, that it was indorsed to plff. in fraud of deft., & that plff. took the bill, by such indorsement, after it was due. Replication, that the bill was indorsed to plff. before it became due, he not knowing the premises; without this, that plff. took it after it was due:—*Held*: it lay on deft. to begin, by proving that the bill was due when indorsed.—*LEWIS v. PARKER* (1830), 1 Ad. & El. 838; 2 Har. & W. 46; & M. R. B. 204; 5 L. J. K. B. 170; 111 E. R.

1184. — On an that a pro  
given for an ill  
plff. after it was  
it was transferred before it  
not rest on plff. *MASTERS*  
2 Car. & Kir. 715, N. P.;  
C. R. 433.

1185. **What evidence sufficient.**—To *assumpsit* on a bill of exchange by indorsee against it, it was pleaded that the bill was drawn but not for

was indorsed to plff. after it became due. The replication was, that it was not indorsed after it became due, but it was indorsed to & taken & received by plff. before it became due:—*Held*: it was sufficient for plff. to put in the bill, & not necessary that he should give any evidence to show that the bill was indorsed to him before it became due.—*PARKIN v. MOON* (1836), 7 C. & P. 408, N. P.

1186. — To prove negotiation after bill overdue.]—In an action by second indorsee against acceptor of a bill of exchange, at 2 months' date, deft. pleaded that the bill was indorsed to plff. when overdue. It was drawn & accepted for the accommodation of R., the first indorsee, in July, 1830. R. was then an intimate friend of deft., but they afterwards quarrelled. No notice of its dishonour was given to the drawer. After the action was brought in 1836, deft.'s attorney applied to plff. to settle it. Plff. said that R. owed him much more money, & that as he had given value for the bill, he must go on with the action. Plff. did not call R. at the trial:—*Held*: there was evidence to go to the jury, that the bill was transferred to plff. after it became due.—*BOUNSALE v. HARRISON* (1836), 1 M. & W. 611; 2 Gale, 113; Tyr. & Gr. 925; 150 E. R. 579.

### C. Effect of Instrument being Overdue.

See 1882 Act, s. 36 (2).

1187. **Indorsee takes "subject to any defect of title"**—*General rule.*—The transfer of an overdue bill or note, like the transfer of any ordinary chattel, gives no better title to the transferee than the person who transferred it to him had, notwithstanding the transferee may have taken the note *bona fide* for a valuable consideration.—

*v. ROYAL BANK OF AUSTRALIA* (OFFICIAL (1856), 27 L. T. O. S. 168; 4 W. R.

(11) & CANA-  
2 W. W. R.

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—The indorsee of

1186 II. — In an action commenced by the indorsee against C., the maker of a promissory note payable five years before, no evidence was given at the trial by plff. of the time & circumstances of the transfer; but deft., in order to show that the note had been indorsed overdue, so as to let in evidence of the indorser's declarations, produced a witness who stated that the indorser had, three months before action, showed him a note made by C. in his (the indorser's) favour, which he proposed to assign to him in payment of a debt; which note witness believed to be the same as that now in suit, though he could not distinctly identify it; the judge having refused to admit evidence of the indorser's declarations, & a verdict being found for plff. on appeal:—*Held*: a new trial should be granted, on account of the statement of the demand, & the strong presumption that the note had been indorsed overdue.—*HARRING v. CLARK* (1842), 3 Kerr, 98.—CAN.

1186 III. — In an action by the indorsee against the acceptor of a bill of exchange, there having been some evidence to go to the jury that the bill was indorsed after maturity:—*Held*: declarations of the drawer while he was holder, might

1186 IV. — *Pleading.*—Where deft., in an action on a promissory note by the indorsee against the maker, relies on an agreement with the payee as a defence, the plea should allege that the note was indorsed after it became due.—*CHURMAN v. RITWICK* (1863), 1 Old. 710.—CAN.

### PART XI. SECT. 6, SUB-SECT. 1.—C.

1187 I. **Indorsee takes "subject to any defect of title"**—*General rule.*—*Held*: the indorsee of an overdue bill or note is liable to such equities only as attach to the bill or note itself, & to nothing collateral due from the indorser to the maker, or indorsee to payee.—*WOOD v. HORN* (1845), 3 C. P. 266.—CAN.

1187 II. — A transferee of an overdue note takes subject to then existing equities affecting the note itself; but his right to one is not subject to be defeated by any after act of the person who had the joint right to one, & no notice of transfer is necessary to perfect the title of a transferee.—*FARMER v. STEWART* (1836), 2 C. L. J. O. S. 116.—CAN.

1187 III. — The maker of a promissory note may set up against the transferee after maturity all defences he could use against the payee, particularly that arising from false pre-

to the equities attaching to it in the hands of the payee from whom he acquires it.—*NEWTON v. HUBSON* (1814), 30 W. L. R. 99; 1 W. W. R. L. R. 617.—CAN.

1187 v. — The maker of a note payable to D. or order, & I him to M., & by M. to plff.

the note had been given for the accommodation of D. & that plff. had given no value for the note & took it after it had become due; he also pleaded satisfaction partly in goods & partly by delivery to D. of a note made by D. & indorsed to deft.:—*Held*: plff. having received the note after it became due took it subject to its infirmities.—*CAVILLIEN v. FRAGER* (1843), 3 U. C. R. 182.—CAN.

1187 vi. — Deft. made his promissory note in favour of another. The note was not paid or protested at maturity, but some time afterwards the payee indorsed it over to plff. in part payment of things purchased from him. In an action on the note, want of protest was raised by deft.:—*Held*: the maker could raise all the questions which might have arisen in the mean time between himself & the —*DUNNAY v. BENTON* (1863), C. L. J. 16.—CAN.

**1188. — Note obtained by fraud.**—Deft. gave three promissory notes to cover his indebtedness to the payee, & subsequently two more notes, in substitution for the first three & to cover further advances. All the notes were payable on demand & were given on the understanding that they should not be negotiated. The payee indorsed all five notes generally to plf. After the payee had so negotiated the notes deft. paid to him the amount due on the last two notes, but deft. was not aware that the payee had parted with the notes, & did not ask for or receive any of them from him. At a later date the payee obtained the five notes from plf. by fraud, & handed them to deft. In an action by plf. on the notes:—*Held*: deft., when he received back the notes, did not become holder for value, since the previous satisfaction of the notes by him was not a consideration given by him when he received back the notes, & as they were then overdue he acquired no better title than the payee had while they were in his hands, & plf., being entitled to disaffirm the transaction between themselves & the payee, by which the latter obtained possession of the notes, could recover in the action.—*NASH v. DE FREVILLE*, [1900] 2 Q. B. 72; 69 L. J. Q. B. 484; 82 L. T. 612; 48 W. R. 434; 16 T. L. R. 208, C. A.

*Annotations*:—*Consd.* Lloyd's Bank v. Cooke, [1907] 1 K. B. 794. *Mentd.* Farquharson v. King, [1901] 2 K. B. 697.

**1189. — Application of rule.**—*Substituted bill.*—Deft. drew a bill of exchange on A., which accepted, payable to the order of B., who indorsed it to plf. On the dishonour of the bill, plf. brought their action against deft., the bill being then held by plf. as agents of B. A former bill had been drawn by deft. on C., which, at the time of its dishonour, was held by D., who took it up, & having struck out his indorsement, sent it to E. to be forwarded to F. for the purpose of receiving the amount from deft. F. indorsed it, being then overdue, to B. for a valuable consideration. B. demanded payment from deft., who drew the bill in question, as a substitution for the former bill, & delivered it to B. Before the latter bill became due, D. gave deft. notice not to pay it:—*Held*: the latter bill was the property of D., & plf. were not entitled to recover the amount of it from deft.—*LEE v. ZAGURY* (1817), 8 Taunt. 114; 1 Moore, C. P. 556; 129 E. R. 326.

*Annotation*:—*Reid*, Muttilloll Seal v. Dent (1853), 5 Moo. Ind. App. 328.

Substituted bills generally, see Part X., Sect. 2, *ante*.

**1190. — Cheque.**—Where the drawer of a banker's cheque issued it 9 months after it bore date upon a consideration, which afterwards failed as between them & the person to whom they delivered it:—*Held*: they could not be permitted to object such circumstance in an action brought by a subsequent holder for a valuable consideration, & without notice, though by the general rule any person receiving a negotiable instrument after it was due, was deemed to have taken it upon the credit of the person from whom he received it, & subject to the same equities as between him & the

party sued on such instrument.—*ROBIN v. STRELLING* (1797), 7 Term Rep. 423; 2 Esp. 574; 101 E. R. 1035.

*Annotations*:—*Consd.* (Cromley v. Ham (1811), 13 East, 498; Sturtevant v. Forde (1843), 4 Scott, N. R. 468. *Reid*, Laws v. Rand (1837), 3 C. B. N. S. 442. See, now, 1882 Act, s. 73.

**1191. —**—A banker's cheque overdue stands on the same footing as a bill or note put into circulation after its date has expired, & the holder must show title in his immediate payer before he can retain the proceeds.—*DOW v. HALLING* (1825), 4 B. & C. 330; 6 Dow. & Ry. K. B. 455; 3 L. J. O. S. K. B. 284; 107 E. R. 1082.

*Annotations*:—*Consd.* Snow v. Pearce (1826), 3 Bing. 400. *Reid*, Slater v. West (1828), 3 C. & P. 325. *Consd.* Robinson v. Hanksford (1846), 9 Q. B. 52; Bank of Bengal v. Fagan (1849), 5 Moo. Ind. App. 27; Serrell v. Derbyshire, Staffordshire, & Worcestershire Junction Ry. Co. (1850), 9 C. B. 811; London & County Banking Co. v. Groom (1881), 8 Q. B. D. 286. *Reid*, Wilson v. Moore (1834), 1 My. & K. 327; Calland v. Lloyd (1840), 6 M. & W. 26; Raphael v. Bank of England (1853), 17 C. B. 161; London Joint Stock Bank v. Simmons, [1892] A. C. 201. *Mentd.* Lang v. Smith (1831), 7 Bing. 281.

**1192. —**—Plf. was, by means of a fraud, induced to draw & pay away two cheques on his banker, amounting to £1330. Six days after the date of the cheques, deft., acting *bona fide*, gave cash for them to a third person, who had not given value for them, presented the cheques, & obtained payment. In an action by plf. to recover back the money:—*Held*: the cheques could not be treated as bills overdue, & taken by deft. at their peril, but the real question in the cause was, whether they had acted *bona fide*, & with due caution.—*ROTHSCHILD v. CONKEY* (1829), 9 B. & C. 388; Dan. & Ld. 326; 7 L. J. O. S. K. B. 270; 109 E. R. 144.

*Annotations*:—*Consd.* Serrell v. Derbyshire, Staffordshire, & Worcestershire Junction Ry. Co. (1850), 9 C. B. 811; London & County Banking Co. v. Groom (1881), 8 Q. B. D. 286.

**1193. —**—*Qu.*: whether one who takes an overdue cheque takes it subject to its equities, as in the case of an overdue bill of exchange.—*SERRELL v. DERBYSHIRE, STAFFORDSHIRE & WORCESTER JUNCTION RY. CO.* (1850), 9 C. B. 811; 19 L. J. C. P. 371; 15 L. T. O. N. 254; 137 E. R. 1110.

*Annotation*:—*Reid*, London & County Banking Co. v. Groom (1881), 8 Q. B. D. 286.

**1194. —**—*Re Conn, Ex p. HUGHES*, No. 923, *ante*.

**1195. —**—The rule of law as to bills of exchange & promissory notes, that an indorsee taking them after maturity takes them upon the credit of & can stand in no better position than his indorser, does not apply to cheques.—*LONDON & COUNTY BANKING CO. v. GROOM* (1881), 8 Q. B. D. 288; 51 L. J. Q. B. 224; 45 L. T. 60; 46 J. P. 614; 30 W. R. 382.

**1196. — Bill negotiated abroad.**—A bill of exchange, drawn & accepted by English firms, & payable in England to the order of X. & Co., was indorsed in Norway by X. & Co. to the order

a. — *Note retained by payee*—On payment by maker.—Note subsequently negotiated by payee.—A promissory note made payable on demand (without specifying interest), was indorsed about two years afterwards by the payee to plf., in payment of a debt; the amount of the note had, in fact,

been paid by the maker to the payee a few days after the date, but the note had not been given up because the payee then stated it was lost or mislaid: in an action by the indorsee against the maker:—*Held*: deft. was not liable.—*JACQUES v. SMALL* (1843), 1 Kerr, 59.—*GAM*

b. — *Note tainted with fraud*—Evidence of knowledge of indorser.—A note of hand was transferred after the time appointed for payment, & there was fraud proved in the transaction:—*Held*: that the law would presume on slight grounds that the indorser had knowledge of the fraud,



# 194 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 6.—Negotiation of overdue and dishonoured instruments: Sub-sect. 1, (c.)**

of M., who indorsed it in blank & handed it in Norway to N., as agent for A., an Englishman residing in London, & an English firm of A. & Co. carrying on business in London, in which A. & J. were partners. While the bill was in the hands of N., & still current, it was seized in execution under a judgment obtained in Norway by a creditor of J. & Co., after the bill had become overdue, it was sold by public auction to M. The seizure & sale took place in the ordinary course of Norwegian law, under which a perfect title was conferred by sale on M. freed from all equities, that law not being the English doctrine that the purchaser of an overdue bill only got such title as his vendor had, or any difference as to extent of negotiability between a current & an overdue bill. M. sold the bill in Sweden, the law of which was the same as that of Norway, to K., who in the ordinary course of business, without

infringement of title to the bill. K. sent the bill for collection to his agents in N. bank. Before presentation for payment, A. & Co. obtained an *ex p.* inj. against the drawers & acceptors from the N. bank after presentation A. & Co. c.

*ex p.* injunction against the N. bank, restraining them from parting with the bill: *Held*: (1) 1882 Act, s. 20 (2) was only declaratory of English law when that law applied; (2) the effect of the transactions in

by Norwegian law, & as according to that law their effect was to give to M. a complete title to the bill free from all equities, the title of K. was that of A. & Co.—*ALCOCK v. SMITH*, [1892] 1 Ch. 238; 61 L. J. Ch. 161 L. T. 120; 8 T. L. R. 222, C. A.

*Annotations*: *Appl.* *Emberlin v. Bank*, [1903] 2 K. B. 870. *Consd.* *Emberlin v. Bank*, [1903] 1 K. B. 677. *Mentid* 1 K. B.

**1197. — Bill delivered for special pur-**

The acceptors of a bill of exchange, for accommodation it was drawn, handed it to the drawer with instructions to him to get it discounted. The drawer indorsed it in

it to L., to discount it, & the drawer then sued him for payment of the bill. In that judgment, & the bill, when it became due, was handed over by L. to

in bill been drawn.

the action by brought in their bill of costs against L. Afterwards bill

*solra.*

if it appears that he omitted to satisfy himself as to the validity of the note.—*MUNT v. LEE* (1813), 7 R. de L. 15.—*CAN.*

**1197.1. — Application of rule to—**  
*Bill delivered for special purpose.*—A note indorsed generally was put into the hands of A. to get it discounted for the maker, B. & Co. Instead of this, B. owing him (A.) a debt, he discounted it for his own benefit, after the note had matured. In an action by the indorsee against the maker & indorser:

*Held*: *plff.* could not recover.—*KERR v. STRAIT* (1851), 6 U. C. R. 87.—*CAN.*

**1197.2. —**—In an action by indorsee against the maker of a note payable to J., by him indorsed to G., & by G. to *plff.*, *def.* pleaded that J. indorsed the note to G. for safe-keeping only, & not to be negotiated, & G. so received it; but after it fell due, & without J.'s authority, he indorsed it to *plff.*, who then had notice of the promise.—*Held*: a

good plea.—*BRETTON v. FISHER* (1867), 26 U. C. R. 336.—*CAN.*

**e. — Note negotiable at particular place.**—A holder of an overdue accommodation note, given subject to a condition that it should be negotiated, & at all, only at a certain place, cannot show a better title than the original payee or his immediate transferor.—*MACARTHUR v. MACDONALD* (1892), 1 Tott. L. R. 346; *affd.* (1893), 23 B. C. R. 371.—*CAN.*

*ROSENTHAL BROTHERS* (1902), 86 L. T. 855; 18 T. L. R. 718, C. A.

**1198. — Note payable on demand.**—

*Qu.*: whether the indorsee of an overdue note, payable on demand, be affected by its previous equities, unless he had notice that it was overdue.—*BARTRUM v. CADDY* (1838), 9 Ad. & El. 275; 1 Per. & Dav. 207; 1 Will. Woll. & H. 724 L. J. Q. B. 31; 112 E. R. 1216.

*Distd.* *Glascock v. Bails* (1889), 24 Q. B. 13. *Held.* *Morley v. Culverwell* (1840), 7 M. & W. 5. *De Preville*, [1900] 2 Q. B. 72.

*See, note*, 1882 Act, s. 36 (3).

**1199. — Jurisdiction of courts of equity.**

Cts. of equity have a concurrent jurisdiction with the cts. of law in relieving against promissory notes taken when overdue.—*HODGSON v. MURRA* (1829), 2 Sim. 515; 57 E. R. 881; *reversd.*, on other grounds, 3 Sim. 283, L. C.

*Annotation*: *Held.* *Stackhouse v. Jersey* (1861), 1 John &

**1200. — Indorsement after action**

**Right of indorsee to sue.**—Where an overdue bill or note is indorsed after action brought, the indorsee, with notice of the action, has no right of action upon it.—*JONES v. LANE* (1839), 3 Y. & C. Ex. 281; 8 L. J. Ex. Eq. 41; 3 Jur. 265; 160 E. L. 708.

613.

**1201. — Declaration on a bill**  
exchange, drawn by L. to his own order, accepted by *def.*, & indorsed by L. to *plff.* Plea, that being the holder of the bill, commenced an action against *def.* under Bills of Exchange Act, 1882, s. 67, & from the indorsement of *plff.* writ it appeared, as the fact was, that L. had indorsed the bill, which action was still pending; & that *plff.* afterwards commenced his action, & that *plff.* took & became the holder of, & L. indorsed, the bill, as in the declaration mentioned, to *plff.* after same became due, & without consideration, & with notice of the pendency of the first action:—*Held*: a bad plea.

There is nothing to prevent a bill from being indorsed after it is due; the only consequence of an indorsement being so made is, that it is an

*TOWNSEND* (1864), 5 B. & S. 613; 4 New Rep. 272; 33 L. J. Q. B. 301; 10 Jur. N. S. 1072; 12 W. R. 1002; 122 E. R. 960; *sub nom.* *DENTERS v.*, 10 L. T. 602.

**1202. — after judgment recovered by prior indorser.**—In an action on a bill of

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appeared that one plff. was one of those by whom that judgment had been recovered.

The indorser of an overdue bill, who has recovered judgment upon it, can confer no title by indorsing it to parties who then, for the first time, claim any interest in it.

*r. LIDDAMAN (1847), 10 L. T. O.*

What are defects of title—Absence of title.—Although the bona fide holder of a promissory note, made without consideration, yet if it was from an indorser, who maintains an action upon it.

*r. Bank*

Where a person takes a note long after it is overdue, he takes it with all the equities by which it is

1205.

the holder of a bill, deposited it with B. as a collateral security for the balance of accounts between them. B. indorsed the bill over to C. after it became due. In an action by C. against A. the bill was not entitled to recover from A. as exceeding the lowest amount of the debt due to the deposit with

*Retd.*

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If a bill is  
settled, to  
bill is

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Absence of  
after maturity of  
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1 Han. 586.

C. R.

(1874).

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(1872), 6

L. R. 464.

PHIL—  
C. C. R.

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indorsed

by the acceptor, deft., & after it was due is indorsed to plff., the relative situation of debtor & creditor not being created between the deft. & plff.

maintain an action

*WILEY v. HAYDEN (1817),*

*See, also, Nos. 816, 884,*

1207.

Accommodation

It is not of itself a defence to an action by the indorser of a bill of exchange, to plead that it was accepted for the accommodation of the deft. without consideration, &

*1 Taunt. 224; 127 E. R.*

*J. Easton v. Pratchett (1833), 4*

*Consol. Lazarus v. Cowie (1841)*

*H. 451*

*J. C. P.*

*Dist.*

*C. B. 841; Ashurst*

*pal Ho*

*L. T. O. 8. 168.*

*Consol. R.*

*O. L. R.*

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The plea was ill. — *STEIN v. Y*  
*1 Cr. M. & R. 505; 3 Dowl. 252; 5 Tyr*  
*4 L. J. Ex. 5; 140 E. R. 1205.*

*), 4*

*R. 419; 214. Held.*  
*835, 4 Tyr. 472; Oulds v. Harrison (1854), 10*  
*W. L. R. 25 L. T. 2*

To an action by  
a bill

*W. L. R. 149. CAN.*

*h.* — *Defia*, purchased a quantity of growing trees, & gave in payment thereof their promissory note, which after passing through the hands of two other holders, & after it became due, was indorsed to plff. for value & without notice. To an action by plff. to recover the amount of the note, *defia* pleaded (under *alibi*), that there never was any consideration for the note, inasmuch as the trees, in payment for which it was given, were not of the character & number represented, & were worthless & unmerchantable; *defia* could not set up want of consideration for the note as a defence to an action by an innocent holder. — *McLennan v. McLennan (1855), 5 H. & O. 128; 5 C. L. T. 442. — CAN.*

*k.* — *Agreement with paper.* — *Defia*, purchased C's stock-in-trade & gave a note for the balance of the price. Before the note became due, C. agreed to allow a reduction from its face value on the ground that the value of the goods had been misrepresented. After the note became due, C. indorsed it without recourse to plff. In an action on the note — *Held*: *defia* had a right to enforce the agreement for the allowance. — *McLennan v. Hunter (1857), 14 O. R. 7. — CAN.*

# BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

6.---X of a

& indorsed to plff. two years after it was due & payable: *Held*: the plea was ill. *STURTEVANT v. FORD* (1842), 4 Man. & G. 101; 4 Scott, N. R. 668; 134 E. R. 42; *sub nom.* STURTEVANT v. FORD 11 L. J. C. P. 245.

*Re Overend, Gurney, & Co.*

... A., indorsee of a bill of exchange for £20, sued B., the acceptor, on the bill. B. pleaded payment of £5 into ct., & that the bill had been given for the drawer's accommodation, that the drawer indorsed the bill for £5 only, & that plff. had notice of the premises, & that the bill was overdue when it was indorsed to plff.: *Held*: the plea was bad. *MOSS v. HOWARD* (1850), 16 L. T. O. S. 197.

1211. ... It is a ... to an action by indorsee against the drawer of a bill of exchange, that it was accepted for the ... of the drawer, without consideration, & that it was indorsed over by the drawer after it had been paid by him at maturity. *PARR v. JEWELL* (1855), 16 C. B. 684; 130 E. R. 928.

1212.

Agreement not to negotiate after maturity. To a declaration on a bill of exchange drawn by A. & accepted by deft., to A.'s order, & by A. indorsed to B., & B. to plff., deft. pleaded that he accepted the bill for the accommodation of A. & B., & without consideration, & on the terms that it should be paid after it was due, & that it was paid to plff. after it was due without deft.'s privity: *Held*: the plea was ill. *CALCUTHERS v. WEST* (1847), 11 Q. B. 143; 17 L. J. Q. B. 4; 12 Jur. 79; 116 E. R. 430; *sub nom.* C. v. WEST, 10 L. T. O. S. 160.

*Wright* (1852), 13 C. B. 909.

1213.

& of A., & that A. told plff. that he had done so, & that he was

was deft. &

to & to give this

that deft.

In prom. A promissory note was made by deft. in favour of K. & indorsed by K. to plff. Plff. took the note after maturity & therefore, subject to the equities existing between deft. & K. Deft. alleged fraud on the part of K., & failure of consideration, but did not discharge the onus which lay upon him of establishing his defence: *Held*: plff. were entitled to recover. *LILLY & CO. v. ROBERTSON* (1818), 21 W. L. R. 385; 4 D. L. R. 842. *CAN.*

the Accommodation. On condition that indorser not to be liable. A person indorsed his name upon a note at the request of the payee, at the same time informing the payee that it did not render him liable: *Held*: he was not liable to a party to whom the payee afterwards indorsed the note after it was due. *MOORE v. SPENCER* (1851), 2 All. 116. *CAN.*

1214. Agreement

ready to give them up to plff. The bill also alleged that A. afterwards fell ill, & when he was near his death, his son found among his papers the note & bill uncanceled, & handed them over to B., who gave them to deft., & that deft. knew, when he received them, that B. had obtained them without the sanction of A., consideration, & the bill sought to have the n & bills delivered up, & to restrain an action deft. upon them. *Qu.*: whether, the case fraud not having been proved, deft. could obtain relief upon proof that the note & bills were given without consideration to A., & that there was express agreement between him & plff., that it should not be negotiated when overdue. *PARR v. JEWELL* (1855), 1 K. & J. 671; 3 W. R. 567; 3 E. R. 629.

*Mentd.* *Parker v. Lewis* (1873), 28 L. T.

1214. Illegal consideration. In an action by indorsee against maker of a promissory note, payable on demand, deft. was admitted to give evidence that the note had been indorsed to plff. a year & a half afterwards, & to impeach the consideration by showing that it had originally been given for smuggled goods, & that payment had been made upon it at several times, but though no privity was brought home to plff.: *Held*: plff. ought to be non-suited, for wherever it appeared a bill or note had been indorsed over some time after it was due, which was out of the usual course of trade, that circumstance created such a suspicion upon it that the indorsee must take it upon the credit of the indorser, & must stand in the situation of the person to whom it was payable. *BANKS v. COLWELL* (1788), cit 3 Term Rep. at p. 81; 100 E. R. 406.

*Hons. & Consl. A. Lee*

*Brown v. Davies* (1789), 3 Term Rep. 16 (1825), 4 B. & C. 323; 3 L. J. O. S. Ch. 30.

1215. Debt on bond, conditioned for the payment of money by instalments. Plea, that deft., by W., as his agent, made unlawful contracts for buying & selling shares in the public stocks, that those contracts were not specifically made, but that W., as agent of deft., voluntarily paid £500 for differences against the form of ... & that for securing repayment of the money to W., deft. gave his promissory note to W., & that long after same became due W. indorsed it to plffs., & that plffs. afterward commenced an action upon the note.

not to negotiate after maturity. To an action against the maker & indorser of a note, the maker pleaded, on equitable grounds, that there was an agreement not to negotiate the note after maturity; & that the note was first indorsed to plff., as in the declaration alleged, after maturity, with notice of its being an accommodation note. *Held*: the agreement alleged was an equity attaching to such note after maturity. *GRANT v. WIMSTABLE* (1871), 21 C. P. 257. *CAN.*

1216. Illegal consideration. The holder of a cheque who only becomes so a long time after it was made & has fallen due, has no more right than the previous holder he has, consequently, no legal recourse against the maker when it is established that the consideration has been made advanced by the original holder for parliamentary election purposes. *DON v. BOULANGER* (1893), Q. B. 1 R. 125. *CAN.*





v. CLEMENTS (1850), 19 L. J. Q. B. 415. T. O. S. 343.

**Morgan v. Whitmore (1851), 6 Exch. 710**

of the agreement, & in order to  
from establishing his rights under the  
as aforesaid, & deft. said that plffs. took  
received the bills of exchange with full  
& notice of all the facts, etc.; *Held*;  
was bad. — JONAS C. LAVATER (1855), 26 L. T.  
93.

**1223.** As to deposit of security. - On the making of a bill of exchange, it was agreed between the drawer & the acceptors, that the latter should deposit with the drawer some canvas as a collateral security for payment of the bill, with power to the drawer to sell the canvas & apply the proceeds in discharge of the bill, if it was not paid at maturity : - *Held* : the agreement created an equity attaching to the bill in the hands of a party to whom the bill was indorsed when it was overdue, & as the drawer after the indorsement had sold the canvas & retained the proceeds, indorsee was debarred from recovering on the bill for so much as the canvas was worth on the date of sale.

**Kinn** (1) B H. & N.  
Ex. O. S. 207; 6 Jur. N. S.  
7 W. 108, Ex.

1. **Field.**

**Not to                      after maturity.**

1223. How proved.]—In an action on a bill of exchange, drawn by W. upon A. & accepted by deft., & by W. indorsed to pltf., deft. pleaded that he accepted the bill & delivered it to W. as a security for a certain loan, & that the sum of deft. was deposited with & received by W. as a collateral security with the bill for repayment of the loan, & upon the terms that any sums which should be received by W., or any person to whom he might indorse the bill, & deliver the scrip, for or in respect of the scrip, should be taken to be in satisfaction *pro tanto* of the bill, that pltf. took the bill with notice of the above. He held the bill upon the above facts. afore-  
W. delivered to pltf., & pltf.

W. indorsed the bill to plff. after it  
 plff. received it upon &  
 that plff. had received in recy  
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 Plff.  
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locking  
of which debt.  
-Canadian Bay  
v. Ross (1879), 33 Q. B. 107

**Figure 1**

indorsed the notes.—*McCLURE v. PRINGLE* (1824), 13 Price, 8; *McCle. 2*; 147 E. R. 903.

**1226. ——— Payment before indorsement.]**

—Where a promissory note has been indorsed after it became due to plff., who sues the maker upon it, the latter is entitled to go into evidence to show that the note was paid as between him & the original payee from whom plff. received it.—

*BROWN v. DAVIES* (1789), 3 Term Rep. 80; 100 E. R. 466.

*Annotations*—*Exptd. Boston v. Sterling* (1797), 7 Term Rep. 423. *Dodd, Harbrough v. White* (1825), 6 Dow. & Ry. K. B. 379. *Consol. Re Overend, Gurney, & Co. v. Swan* (1848), L. R. 6 Ex. 344. *Reid, Parr v. Jewell* (1855), 16 C. B. 484; *London & County Banking Co. v. Groom* (1881), 5 Q. B. D. 258; *Raphael v. Burt* (1884), Q. B. & R. 325.

**1227. ———.]**—*PARR v. JEWELL*, No. 1211, *ante*.

**1228. ——— Payment by drawer—Bill in hands of banker as security.**—Plffs. sued as indorsees of a bill of exchange drawn & indorsed by C. & Co. accepted by deft. for his accommodation. C. & Co., who kept a banking account with plffs., deposited the bill with them as collateral security, but were the holders of the bill in Feb., 1812, when it became due. At that time plffs. had accepted bills to a much larger amount than the cash balance in favour of C. & Co., but held collateral securities to a considerable amount. The bill in question, when due, was dishonoured & returned to C. & Co., who remitted it to plffs., requesting them to hold it & to place it to their account when paid, but no credit was given to C. & Co. by the plffs. on account of the bill. Plffs. held the bill from Feb., 1812, till Feb., 1813. C. & Co. then became bkpt. & in July, 1814, payment of the bill was demanded of deft. :—*Held*: although C. & Co. had received satisfaction from the drawer, when the bill was returned to plffs. they recurred to their former rights.—*BOSANQUET v. DUDMAN* (1814), 1 Stark. 1, N. P.

*Annotation*—*Reid, Burton v. Benton* (1817), 2 Q. B. 843.

**1229. ——— Payment by acceptor—Discharge against subsequent indorsee.**—The drawer of a bill payable to his own order, after the bill became due, settled with the acceptor, & gave him a receipt in full of all demands. The drawer being afterwards in possession of the dishonoured bill :—*Held*: an indorsee from the drawer could not maintain an action against the acceptor.—*THORNTON v. CLARKE* (1817), 2 Stark. 251, N. P.

*Annotations*—*Dodd, Glasscock v. Ball* (1849), 59 L. J. Q. B. 51. *Reid, Hartman v. Caddy* (1879), 9 Ad. & El. 275.

**1230. ——— Payment of advances—Note in hands of banker as security.**—To an action by indorsee against maker of a promissory note, deft. pleaded that he made the note & indorsed it to the M. Bank, as a collateral security for certain advances made or to be made to the M. Bank, upon the terms, that if those advances should be repaid before the note became due, deft. should

not be called upon to pay it. The plea then averred, that the advances so made were repaid before the note became due, that he had no value for his indorsement, & that the note was indorsed to plff. after it became due. *Replication, de injuriis* :—*Held*: it was an essential allegation, without which the plea must fail, that the advances were repaid before the note became due, & it was a misdirection, for the judge, on the trial of that issue, to tell the jury, that if the note was given as a part security for the advances so made to the M. Bank, deft. was entitled to a verdict.—*RICHARDS v. MACEY* (1845), 14 M. & W. 484; 14 L. J. Ex. 359; 153 E. R. 560.

**1231. ——— Payment to holder.]**—To a count by indorsee against acceptor of a bill of exchange, deft. pleaded, that the drawer's indorsement was in blank, that, when the bill became payable, & thence until the making of the agreement after mentioned, the bill was lawfully held by W. for value, that, whilst W. was the lawful holder thereof, it was agreed between deft. & W., that deft. should pay him £10, part of the amount of the bill, in cash, & should deliver him his deft.'s promissory note for £15 15s., at 3 months' date, for the residue, that, afterwards, whilst W. was the lawful holder, & after the bill became due, & before plff. became possessed of it, or had any title in respect of it, deft., in pursuance of the agreement, paid the £10 to W., & made & delivered to him a note for £15 15s., & paid same when due, that the bill was overdue when plff. first took and received it, & before plff. had any title in or to same :—*Held*: the plea sufficiently alleged that W. had a legal interest in the bill, & that the bill was paid, when due, to the lawful holder.—*LOMAX v. LANDRELL* (1848), 6 C. B. 577; 6 Dow. & Ry. 306; 18 L. J. C. P. 88; 12 L. T. O. S. 195; 13 Jur. 38; 136 E. R. 1374.

*Annotation*—*Reid, R. v. Dale* (1851), 17 Q. B. 61.

**1232. ——— Part payment.]**—A bill of exchange was drawn by A. on B., & indorsed to C. The bill was not satisfied when due, but part payments were afterwards made by the drawer & acceptor. Two years after it had become due, D. paid the balance to C., the holder, & the latter indorsed the bill & wrote a receipt on it in general terms :—*Held*: it appearing that D. paid the balance, not in the account of the acceptor or drawer, but in order to acquire an interest in the bill as purchaser, it might be indorsed by D. after it became due, so as to give the indorsee all the rights which C., the holder, had before the indorsement, & such indorsee might recover from the drawer the balance unpaid by him.—*QUAYNE v. KEY* (1832), 3 B. & Ad. 313; 110 E. R. 117.

*Annotations*—*Consol. Law v. L. & Y. Ry. Co.* (1871), 4 Ch. App. 327. *Reid, Pichard v. Sears* (1831), 6 Ad. & El. 462; *Freeman v. Cooke* (1848), 7 Exch. 454; *Jordan v. Money* (1851), 5 H. L. Cas. 185; *Hempson v. Accident Death Insur.* (1857), 2 C. B. N. S. 257; *Hawes v. Foster* (1858), 2 H. & N. 779.

**1233. ——— Payment by maker**  
—Note transferred by bank to bank manager.]—Delt. made a promissory note payable to the order of a bank months after date & indorsed without recourse to plff. by the bank. Delt. pleaded that the note was given to the bank as accommodation for deft.'s brother, that money which ought to have been applied in discharge of the note had been sent to the bank & that

plff., the local manager of the bank, had acquired the note after maturity & payment. Plff. had advanced deft.'s brother money out of his own pocket receiving the note as security but deft. had no knowledge of this :—*Held*: plff. was estopped from asserting that he & not the bank was the holder of the note.—*FOX v. PATRICK* (1918), 13 G. W. N. 262; *affd.* 14 G. W. N. 262.—*CAN.*

**1233 a. ——— Note payable on demand—In hands of holder in due course.]**—*MILBURN BANK v. PARKER* (1919), 19 R. L. N. S. 459.—*CAN.*

**1233 b. ——— Part payment.]**—The indorsee of an overdue note takes it subject to payments made on account thereof.—*KIRBY v. McDONNELL*, (1919) 2 W. W. R. 576.—*CAN.*





& Trading Co., Carruth & Hayward's  
(1868), 4 Ch. App. 174. *Monte Jansopp v. Lui*  
Feb. 614; *Homes v. Kidd* (1837), 1 F.  
; *Thacker v. Hardy* (1873), 4 Q. B. D. 883.

1239. ——— How pleaded. —To an action by indorsee against maker of several notes, one of which was payable at months' date, & the others on demand, deft. that, after the making of the before the indorsement of any of them to & whilst T., who indorsed to plff., was the holder of

, in a sum exceeding the amount of the notes, for money lent by their testator, etc., in which

the indorsement of the to plff., & while T. was the holder, it was between him & deft. & J. that the amount of the notes, & the money due thereon, should set off & allowed to him out of the money so from him to them, & that deft. & T. mutually be from that amount, that

, & that they in the of T. until he ind to pl without the consent or fault of T. them plff. took them,

thereto, that the were satisfied & in the ; the was had, for not showing that the value when by T. v. entitled to

CRIPPS v. DAVIS (1813), 12 M. & W. 159; 13 L. J. Ex. 217; 2 L. T. O. S. 125; E. R. 1152.

r. L. T.

1240. Indorsee acquires same title as transferor had. —In an action by second indorsee against of a bill of exchange, if the person who

up that the bill was part of of goods bought by & G., the drawers, & filed a H. I but it did not

the bill with full plff. of H. U. for contract in & asking he gave her the old of it, held: CAN. C. R.

other bills in the name Upon the application of H. & G., in chambers struck out, & the names of H. & G. on O. L. R. 19; 38 H.

a to the bill. T. s. L. 10 P. R. —CAN.

#### PART XI. SECT. 6, SUB-SECT. 2.

a. Indorsee takes "subject to any defect of title." —A bill of exchange may be transferred by indorsement after it is dishonoured & noted for non-payment; the indorsee, in such a case, coming in place of the indorser, & being liable to all exceptions that can be pleaded against him. —*ALLAN v. GALL* (1873), 4 Fec. Coll. 976. —SCOT.

b. —Plf. sued upon a promissory note made by deft. & indorsed to plf. after maturity. The was payable to D., & was a

indorsed it to an action it, cannot give that it was for a in it N. it was c.

Act, s. 36 (5).

1241. Indorsee takes "subject to any defect of title." —What are defects of title —Agreement between holder & indorser —To discharge indorser in certain events. —holder in America two bills of tenor, them to his agents in

& receive the money when & of it to plff., while the in his agents' hands, agreed with deft., who had lent his indorsement on each to the drawer, from whom the holder them, that upon payment of one of the bills be exonerated from both. In the

by not knowing of such agreement between the indorser, assigned one of the to plff., who was informed of & who received it liable to all its about notice of such agreement: the bill so received by plff. was bound by the agreement, & deft., having afterwards & discharged the other bill, which had in the hands of the same agents, was oth. *CROSSLAND v. HAM* (1811), East, 408; 104 E. R. 464.

def. favour it L & P on in ( for D's pur if th in

of it, held: CAN. C. R.

by D. C. \$100.

dis. of all it by 273. R.

a. —The indorsee of a note who takes it after dishonour, of which fact he had notice, is not a holder in due course & the maker is entitled to set up all defences against the indorsee which he might have against the payee. —*Union Investment Co. v. WALLS* (1907), 5 W. L. R. 409; recond. (1908), 39 M. C. R. 613. —CAN.

c. —What are defects of title —Agreement between maker & payee —That note to be used for particular

(1914), 29 W. L. R. in turn by A., his debtor to had in the

**6. Negotiation of overdue and dishonoured**  
**. 2. Sect. 7.]**

**1242. ———— Set-off.]**—The indorsee or transferee for value of a bill of exchange after dishonour has a right to recover against the acceptor, whether the bill was given for value or not, unless there be an equity attached to the bill itself, amounting to a discharge of it, & the right of set-off is not an equity which attaches to the bill. *Re OVEREND, GURNEY & Co., Ex p. SWAN* (1868), 1 L. R. 6 Eq. 344; 18 L. T. 230; 18 W. R. 500.

*Held, Re European Bank, Ex p. C. Commercial Bank* (1870), 5 Ch. App. 358.  
*Oriental Financial Corp'n. v. Overend, Gurney* (1871), 7

**1243. ———— Cheque negotiated in breach of agreement to pay into bank.]**—C. owed to pltf., a stockbroker, £115 in respect of dealings in stocks & shares. In order to provide funds to meet the debt deft., at C.'s request, drew a cheque for £115 payable to C. or order, which C. was to pay into his bank to meet his cheque for the same amount which he drew at the same time in favour of pltf. C. indorsed the cheque drawn by deft. & paid it into his bank, & handed his own cheque to pltf. Deft. changed his mind & stopped his cheque, & thereupon C. handed it to pltf., who had notice that it had been dishonoured. In an action by pltf. against deft. on the cheque: *Held*: as pltf. took the cheque with notice that it had been dishonoured, he took it subject to any defect of title attaching to it at the time of dishonour, & as C. negotiated it to pltf. in breach of faith instead of paying it into his bank, there was a defect of title attaching to it within 1882 Act, s. 29, & pltf. was

not entitled to recover.—*HORNBY v.* (1908), 24 T. L. R. 494, C. A.

**SECT. 7.—NEGOTIATION OF INSTRUMENT TO PARTY ALREADY LIABLE THEREON.**

*See* 1882 Act, s. 37.

**Right to re-issue instrument.]**—*See* Part XIV., Sect. 2, sub-sect. 8, *post*.

**1244. Note negotiated back to prior indorser.—Right to sue subsequent indorser.]**—A. having declared on a promissory note against B. made by C. to A., by him indorsed to B., & by him again indorsed to A., & having obtained a verdict, the judgment was arrested.—*BISHOP v. HAYWARD* (1791), 4 Term Rep. 470; 100 E. R. 1124.

*Annotations:—Folld. Britten v. Webb* (1824), 2 B. & C. 483. *Consd. Wilders v. Stevens* (1846), 15 M. & W. 208. *Held. Morris v. Walker* (1850), 15 Q. B. 589; *Wilkinson v. Unwin* (1881), 50 L. J. Q. B. 338.

**1245. ————.]**—Declaration by O., stating that B. made his promissory note for £23 payable "to the order of O." 3 months after date, & delivered it to O., & O. indorsed to deft., & deft. indorsed to pltf.; dishonour & notice. Plea, that O., stated in the count to have indorsed to deft., & pltf., were one & the same person. Replication, that, before the indorsement, etc., B. was indebted to pltf. in £23, & it was agreed between pltf. & B., at B.'s request, he being unable to pay, that he should give pltf., who would accept & take, on account of such debt, B.'s note for £23 payable at 3 months, which time pltf. should give for

**PART XI. SECT. 7.**

**1244 i. Note negotiated back to p.**

*dorser.]*—The indorser of a note to order, who has become the owner of it by having paid it, has a right to payment thereof only as against prior indorsers, guarantors, if any  
 (1910), Q. R. 37 S. C.

CAN.

**1244 ii. ———— Indorsement as surety.]**—Declaration on a note made by P. payable to F. or order, indorsed by F. to deft., & by deft. to pltf. Plea, that F. is pltf., & no other person. Replication, that at the time of making the note & indorsement by deft., the maker was indebted to pltf., & it was agreed between them, that in that the maker would deft. to indorse the note & surety thereof to pltf., pltf. would give time to the maker until the note matured; that the note was made in pursuance of such agreement, & deft. for the accommodation of the pltf., with the of thereby becoming as indorser; that the the note so indorsed thereupon gave time to him as agreed on, & that the debt is un-

(1850), 15 U. C. R. 449.

**1244 iii.**

*ration, by M. & Co., on a note by S. & R., payable to M. & Co.,*

or by

L. & Co.

who indorsed it to & are liable to deft. as such if he should be made to pay. tion, that pltf.'s names were used as payees for form only; & it was understood by all parties to the note, that although nominally made payable to pltf., it was substantially to be paid to deft., because, by a special agreement between pltf. & deft., notwithstanding the form of the note, pltf. were not to become liable to deft. by indorsing to him. The evidence showed that the note was given to enable the makers to get goods on credit from pltf., & that deft. knew he was indorsing for that purpose.—*Held*: pltf. could recover.—*MORFATT v. REES* (1857), 15 U. C. R. 527.—CAN.

**1244 iv. ———— Note indorsed to new indorser for purpose of action.]**—The maker of a note, being indebted to the payee, procured deft. to indorse to the payee, who had indorsed it in blank, & "without recourse" to Deft. pleaded that the note was by the payee without consideration for the accommodation of the maker & the payee, indorsed in blank & delivered it to payee, & there never was any consideration for the indorsement of the note to deft.; & that the payee, in fraud of deft., delivered the note to pltf.

ing, the pltf.'s agent to It appears without in

to) SMITH v. C. P. 210.—CAN.

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payment, provided B. would procure deft. to indorse the note for the purpose of securing payment, & by way of guarantee, of which premises deft. had notice, & assented & agreed thereto, & thereupon, in pursuance of the agreement, B. made & delivered the note to pltf., on account, etc., & pltf., in furtherance of the agreement & not otherwise, & without any consideration or value in that behalf, indorsed to deft. as in the declaration mentioned, in order that deft. might, in pursuance & furtherance of the agreement, & not otherwise, indorse the same note to pltf. for the purpose aforesaid, & deft., in pursuance of the agreement & for the purpose aforesaid & not otherwise, indorsed same to pltf., which was the indorsement to him in the declaration mentioned:—*Held*: an answer to the plea.—*MORRIS v. WALKER* (1850), 15 Q. B. 589; 19 L. J. Q. B. 400; 15 L. T. O. S. 298; 14 Jur. 851; 117 E. R. 582.

—*Consd.* *Wilkinson v. Unwin* (1881), 7 Q. B. D. 636.

**1246. Bill negotiated back to drawer—Right to sue subsequent indorser—Indorsement as surety.**—Declaration upon a bill of exchange drawn by pltf. upon F., indorsed by pltf. to deft., & re-indorsed by him to pltf. Averment, that at the time of the drawing of the bill, & of the indorsement by deft. to pltf. it had been agreed between them that the name of deft. should be indorsed upon the bill as a security to pltf. for the due payment thereof by F., & that the bill was so indorsed by deft. under such agreement, & for such purpose only, & that pltf. took & received the bill in satisfaction of such debt of F., upon the faith that deft. would indorse same as such security, & that the indorsement by pltf. was made without any consideration, & for the purpose only of procuring the indorsement of deft., & making the bill negotiable. Averment, that the bill was presented to F., & that he refused to pay, & that notice of such refusal was given to deft., & he thereby became liable to pay, & being liable, promised:—*Held*: the declaration was bad, inasmuch as, if the action was founded upon the bill, pltf. could only recover according to the custom of merchants, & by that custom pltf., as indorsers & drawers, would be liable to pay the amount of the bill to deft., & if the action was considered as founded upon the special contract it was not maintainable, inasmuch as there was not any consideration for deft.'s indorsement.—*BRITTEN v. WEBB* (1824), 2 B. & C. 483; 3 Dow. & Ry. K. B. 650; 2 L. J. O. S. K. B. 118; 107 E. R. 463.

*Morris v. Walker* (1850), 15 Q. B. D. *Wilkinson v. Unwin* (1881), 7 Q. B. D.

—.]—*Assumpsit* by  
against indorser of a bill of exchange, drawn by  
W. & Co. on H., indorsed by W. & Co. to deft.,  
& by deft. to pltf. Plea, that W. & Co. were

pltf., & no other persons, that pltf. & no other persons were the makers of the bill, & the persons to whose order it was payable, & the persons who indorsed to deft., & who were liable to him as such indorsers, in the event of payment of the bill by him. Replication, that, at the time of the drawing of the bill, H. was indebted to pltf. in the amount of the bill, & thereupon it was agreed between pltf. & H., that, in consideration that H. would procure deft. to indorse & become surety as indorsee to pltf. of the bill, they would give time to H. for payment of the debt, that pltf., in pursuance of the agreement, drew & indorsed the bill as in the declaration mentioned, & deft., for the accommodation of H., indorsed it to pltf., with the intent of thereby becoming surety as indorser to pltf. of the bill, that H., in further pursuance of the agreement, delivered the bill so indorsed to pltf., & pltf. gave time to H., & that no part of the debt had been paid to them:—*Held*: (1) the facts disclosed in the replication showed a sufficient title in pltf. to sue deft. on his indorsement to them, notwithstanding their previous indorsement to him; (2) the replication showed a sufficient consideration for deft.'s promise to pay pltf. the amount of the bill.—*WILDERS v. STEVENS* (1846), 15 M. & W. 208; 15 L. J. Ex. 108; 153 E. R. 824.

*Annotations*:—*Reid*. *Boulcott v. Woolcott* (1847), 16 M. & W. 584; *Wilkinson v. Unwin* (1881), 7 Q. B. D. 636.

**1248.** ———.]—The son of deft. bought goods of pltf., & required credit to enable him to pay. It was agreed that deft. should become surety for the price of the goods, & pltf. drew two bills of exchange on the son, & indorsed them to deft., who re-indorsed them to pltf. The bills having been dishonoured at maturity:—*Held*: pltf. were not precluded from suing deft. on the ground of circuitry of action, & they could recover the amount of the bills from deft.—*WILKINSON v. UNWIN* (1881), 7 Q. B. D. 636; 50 L. J. Q. B. 338; 46 L. T. 123; 29 W. R. 458, C. A.

*Distd.* *Jenkins v. Comber* (1898), 67 L. J. Q. B. 780. *Fold*. *Glenie v. Smith*, [1907] 2 K. 507. *Reid*. *Harburg India Rubber Comb Co. v. Winter v. Martin* (1911), 71 L. J. K. B. 529.

**1249.** ———.]—Where a bill was drawn by pltf. upon A., payable to the order of deft. & indorsed by him as surety, & then delivered to pltf. pursuant to an agreement:—*Held*: the rule that a drawer of a bill of exchange could not sue an indorser, only applied where circuitry of action would otherwise arise.—*HOLMES v.* (1883), 1 Cab. & El. 23.

*Distd.* *Jenkins v. Comber*, 67 L. J. Q.

780.

**1250.** ———.]—Deft. entered into an agreement with pltf. to guarantee the payment by T. for goods sold to him by pltf., & for that

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B. or order; B. indorsed to C., who indorsed to D.; D., the holder, died, leaving B. one of his exors.; the exors. of D. sued C.:—*Held*: D., having made B. his exor., & there was no re

available to drawer of a bill  
it by indorsement from a holder in due course he is not protected by s. 37 (3) of Proclamation 11 of 1902, & duties are available to him if sued by the drawer.

L. D. 75.—S. AF.

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which he indorsed in blank, to them for the benefit of his & one of the trustees then to the wife the notes signed him, with an indorsement that

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thereon. Sects. 8, 9, 10 & 11.)

to indorse bills accepted by T. for the amount. In pursuance of that agreement T. wrote his acceptances across the face of two blank stamped bill forms, & deft. indorsed them. T. then handed the bill forms to plff., who filled up the body of the bills for the agreed amount, making them payable to his order, signed them as drawer, & also indorsed them. Plff. duly delivered the goods to T., who eventually was unable to pay for them:—*Held*: as deft. agreed to be liable for the price of the goods supplied by plff. to T., & indorsed the bills for that purpose, he was liable on the bills. *GLENIE v. SMITH*, [1908] 1 K. B. 203; 77 L. J. K. B. 193; 98 L. T. 515; 24 T. L. R. 177, C. A.

*Annotation*:—*Didd*, Shaw v. Holland, [1913] 2 K. B. 15.

**1251. — Indorsement for acceptor's accommodation.**—The first count of a declaration stated that O. made his bill of exchange, & directed same to W., & thereby required her to pay to his order £10, & that O. indorsed the bill to deft., who indorsed to plff. Deft. pleaded, that O. was plff., & no other person, & that plff., & no other person, was the maker of the bill, & the person to whose order same was payable, & the person who indorsed same to deft., & was liable to deft. as such indorser, in the event of payment of the bill by deft. Replication, that deft. indorsed the bill to plff. for the accommodation of W., & in order to secure a debt of £10 due from her to plff., which debt was still unpaid, that there never was any consideration or value for the indorsement by plff. to deft., but that the bill was so indorsed by plff. to deft., in order that same might be indorsed by deft. to plff. for the purpose of deft. as such indorser for payment of the debt due from W.:—*Held*: the replication was not a departure. *SMITH v. MARSHACK* (1848), 6 C. B. 480; 6 Dow. & L. 303; 18 L. J. C. P. 65; 12 L. T. O. S. 217; 12 Jur. 1050; 130 E. R.

*Fold*, Morris v. Walker (1850), 15 Q. B.

*Wilkison v. Unwin* (1881), 7 Q. B. D.

*Mentd*, Ashpitel v. Bryan (1803), 3 B. & S. 474.

### BY GIFT.

**Right of payee—Infant payee—Gratitude to payee's father Affection for payee.**—Where a promissory note, expressed to be for value received, was made in favour of an infant aged nine years, & in an action upon the note by the payee against the exors. of the maker, no evidence of consideration being given, the judge told the jury, that the note being for value

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e to the infant's father, or affection to the

would suffice:—*Held*: although the jury might have presumed that a good consideration was given, yet those pointed out were insufficient, & a new trial should be granted.—*HOLLIDAY v. ATKINSON* (1826), 5 B. & C. 501; 8 Dow. & Ry. K. B. 163; 108 E. R. 187.

*Annotations*:—*Fold*, Easton v. Pratchett (1835), 1 Cr. M. & R. 798; *Milnes v. Dawson* (1850), 5 Exch. 948. *Mentd*, *Re Leaper*, Blythe v. Atkinson, [1916] 1 Ch. 579.

**1253. — Indorsee.**—To a declaration on a bill of exchange, by indorsee against indorser, deft. pleaded that he indorsed the bill to plff., without having or receiving any value or consideration whatsoever for or in respect of his indorsement, & that he, deft., had not at any time had or received any value or consideration whatsoever for or in respect of such indorsement:—*Held*: the plea was sufficient.

The jury having found that there was no consideration for deft.'s indorsement, there is an end of the case (LORD DENMAN, C.J.).—*EASTON v. PRATCHETT* (1835), 2 Cr. M. & R. 542; 4 Dow. 549; 1 Gale, 250; 5 Tyr. 1129; 4 L. J. Ex. 335; 150 E. R. 232, Ex. Ch.; *affg*. S. C. (1835), 1 Cr. M. & R. 798.

*Annotations*:—*Fold*, Mills v. Oddy (1835), 2 Cr. M. & R. 103. *Fold*, Stoughton v. Kilmorey (1835), 2 Cr. M. & R. 72; *Woodgate v. Field* (1842), 2 Hare, 211. *Mentd*, Noel v. Rich (1835), 5 Tyr. 632.

**1254. — Evidence of trust.**—A person voluntarily gave his promissory note to trustees for his natural child, & deposited with them the title deeds for the purpose of carrying into effect his intention as to the promissory note:—*Held*: a valid trust had been created.—*ARTHUR v. CLARKSON* (1866), 35 Beav. 458; 14 W. R. 754; 55 E. R. 974.

*Annotation*:—*Didd*, *Re Whitaker* (1889), 42 Ch. D. 119.

**1255. —**—Testatrix made her will in 1873, & thereby bequeathed a legacy of £150 to E., who was living with her as a domestic servant. In Aug., 1877, testatrix handed to C., her solr., whom she had appointed one of her exors., a note for £200, signed by herself & on demand to E., telling C. not to mention note to any one but E., but to retain it till the of testatrix, & then to give it to E., if she remain in the service of testatrix until her E. was informed of the note soon after it had been handed to C. Testatrix had previously told E. that, if she would continue in her service until her death, she would leave in the care of C. a present for her, beyond what she might leave to her in her will. E. remained in the service of testatrix until the death of the latter, & the promissory note continued in the possession of C. Testatrix died in 1881. She had never revoked the direction which she had given to C. about the note:—*Held*: C. was constituted a trustee of the note, that he might after the death of testatrix hand it over to E., if she had fulfilled the prescribed condition, & as testatrix had never

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**q. Note indorsed by husband to wife**  
—In expectation of death.—A man, in expectation of death, indorsed a negotiable note specially to his wife & delivered it to her:—*Held*: (1) the wife acquired no right by the indorsement; (2) it could not operate as a donative mortis causa, the note not being transferable by delivery only.—*WILSON v. WILSON* (1863), 3 All. 396.  
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revoked the direction which she had given to C., E. was entitled to prove for the amount of the note in the administration of the estate of testatrix.—*Re RICHARDS, SHENSTONE v. BROCK* (1887), 36 Ch. D. 541; 56 L. J. Ch. 923; 57 L. T. 249; 36 W. R. 118.

*Annotation:—Dtd. Re Whitaker* (1889), 42 Ch. D. 119.

**1256. — To prove in maker's estate—Against creditors for value.]—**The payee of a promissory note given without consideration is not, even in the administration of a solvent estate, in the same position as the payee of a voluntary bond, so as to be entitled to claim against the estate after creditors for value.—*Re WHITAKER* (1889), 42 Ch. D. 119; 58 L. J. Ch. 487; 61 L. T. 102; 37 W. R. 673; 5 T. L. R. 424, C. A.

**1257. Note given by payee to maker.]—**A bill by the exors. of payee against maker of a note prayed payment on the foundation of its loss. It turned out to be in deft.'s possession, who claimed it by gift from testator:—*Held*: the evidence was sufficient to prove deft.'s allegation, that the note was actually delivered to him by testator, intending that he should not be sued upon it, & the bill should be dismissed with costs.—*COOKE v. DARWIN* (1853), 18 Beav. 60; 23 L. J. Ch. 997; 22 L. T. O. S. 113; 2 W. R. 33; 52 E. R. 23.

What constitutes consideration, *see* Part X., Sect. 1, *ante*.

Absence of consideration generally, *see* Part X., Sects. 3, 8, 10, *ante*.

*Donatio mortis causa.*]—*See* GIFTS.

## SECT. 9.—TRANSFER BY ASSIGNMENT.

**1258. Voluntary deed—Personal estate.]—**An assignment in general terms of personal estate

### PART XI. SECT. 9.

*Note payable to payee or order.]—*A promissory note payable to payee or order cannot be negotiated by the payee of a deed of gift of all his property the note.—*ABBOY CHETTI v. RAU* (1894), 1 L. R. 17 Mad. IND.

*not payable to order or*  
A promissory note made simply to the payee without the addition of the words "order" or "bearer," & therefore not negotiable, was assigned to a third person:—*Held*: the assignee could sue upon such note.—*KANHAIYA LAL v. DOMINGO* (1878), 1 L. R. 1 All. 732.—IND.

*payable to payee "only."]*  
*v. EDMONTON PORTLAND Co.* (1916), 34 W. L. R. 573; 10 W. W. R. 653; *affd.* 33 D. L. R.—CAN.

*who was not a party to the note*  
got it into his possession maturity, as collateral security.

*G. before maturity of the note,*  
from the assignee & of the insolvent's might sue the

—CAN.

maker, as follows: "Will you kindly pay my sister" (naming her) "the amount of your notes." In 1910 the payee died having appointed her sister her extrix. The sister before her death in 1912 gave *pltf.*, her niece, a similar writing. *Pltf.*, after the death of her aunt, gave deft. proper notice of the assignment:—*Held*: (1) the documents were valid assignments of the debt due by deft., & *pltf.* was entitled to recover the amount of the notes & interest; (2) the absence of indorsement of the notes was no bar to *pltf.*'s right to recover the considera-

O. W. N.

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for Rs. 5,000  
in favour of B. in 1882. In 1884 H. by an agreement in writing assigned all her property, including the note to M. M., but did not indorse over the note to a bank in payment of a debt. In a suit by M. & the bank against H. to recover the principal & due on the note:—*Held*: *pltf.* could not maintain suit. *PATTAT AMRADI MA v. SHI* (1887), 1 L. R. 1 IND.

A mtge. in writing of a note, executed in favour of by a third party, creates an of the promissory note in favour even without an

*Irwin* (1913), 1 L. R. 38 Mad. IND.

will pass promissory notes in the possession of the settlor, although not indorsed to the donee.—*RICHARDSON v. RICHARDSON* (1867), L. R. 3 Eq. 686; 36 L. J. Ch. 653; 15 W. R. 690.

*Annotations:—Mentd.* *Penfold v. Mould* (1867), 17 L. T. 59; *Warriner v. Rogers* (1873), L. R. 16 Eq. 340; *Richards v. Delbridge* (1874), L. R. 18 Eq. 11; *Baddeley v. Baddeley* (1878), 9 Ch. D. 113; *Re King, Sewell v. King* (1879), 14 Ch. D. 179; *Re Breton's Estate, Breton v. Woollven* (1881), 17 Ch. D. 416.

## SECT. 10.—TRANSFER BY WILL.

**1259. Bequest by payee of note—Right to sue.]—**Wills Act, 1837 (c. 26), s. 3, does not enable testator to bequeath a promissory note made to him, so as to pass the right to sue in respect of it. Such right is in the exor.—*BISHOP v. C* (1852), 18 Q. B. 878; 21 L. J. Q. B. 391 19 L. T. O. S. 217; 17 Jur. 23; 118 E. R. 332.

, further, Nos. 1296, 1297, *post*.

## SECT. 11.—DISCOUNTING.

*See, also*, Nos. 25, 600 *et seq.*, *ante*.

**1260. Discount & deposit distinguished.**  
tinction between discount & deposit of bills, depending on, not the mere fact of indorsement, but the intention to make an absolute transfer, giving full power to go against all parties on the bills, or merely to enable the person, with whom they are deposited, to receive the amount from the other parties. Indorsement is *prima facie* evidence of the former, unless the object of mere deposit is clearly shown.—*Ex p. TWOGOOD* (1812), 19 Ves. 229; 34 E. R. 503.

*Annotation:—Conad.* *Re Frith, Ex p. Schofield* (1879), 48 L. J. Bcy. 122.

property in a note to bearer or donee in blank cannot be except by delivery to & a *pltf.*, who never having delivery, either actual or syn has not become owner of the cannot proceed to recover.—*THE DE*

Q. R. 4 S. C. 345.—CAN.

*to make maturity.]—*When note is transferred maturity not by indorsement, but being included in a general transfer of the assets of a business, the acquiring the note must have of the transfer served on the before a right of action exists in of such transferee.—*CLONBROCK BOUTER Co. v. BROWNE* (1900), Q. R. 18 S. C. 375.—CAN.

*h. When notice must be given—*  
*given after death of assignor.]—*  
*ante* in which:—  
It was of no consequence that notice was not given until after the death of the assignor.—*TYRRELL v. MURPHY* (1912), 5 O. W. N. O. L. R. 226.—CAN.

## PART XI. SECT. 11.

*h.*  
—*Pltf.* provisional for by deft. in favour of C., who it & then discounted it with *pltf.* over 12 per cent. discount this discounting was not in



&amp; 18.]

**1261. Bill misappropriated by transferee—Liability to transferor.**—Declaration on a promise by deft. to pay over to pltf., the amount of a bill of exchange, delivered to him by pltf., to get discounted:—*Held*: deft. having paid the bill in discharge of a debt of his own, was liable to pltf. as if he had discounted the bill.—*OUGHTON v. WEST* (1818), 2 Stark. 321, N. P.

**1262. Bill not indorsed—Bill dishonoured—Right to recover.**—The discounter of a bill payable to cannot, if payment is refused, maintain an action for the money he advanced against the transferee to whom he advanced it, unless such bill is indorsed.—*HANK OF ENGLAND AND COMPANY v. NEWMAN* (1809), 1 Ld. Raym. 442; 12 Mod. Rep. 241; 1 Com. 57; 91 E. R. 1193.

*Appl. Embley v. Lye* (1812), 15 East, 7. *Reid v. Hyle* (1829), 3 Mod. & P. 130; *Dumont v. (1867)*, 17 L. T. 71. *Mentid. Hartop v. Hoare* 1 Wils. 8.

**Signatures of drawer & acceptor forged—Right to recover.**—Pltf., bankers, discounted for defts., bill-brokers, a bill of exchange, which the latter did not indorse. The signatures of the drawer & acceptor, the latter of whom kept an account with pltf., were forged:—*Held*: defts. were liable to refund the money, & the fact of their having paid over the amount to the indorsee for whom they were brokers, would not relieve them from their liability.—*FULLER v. SMITH* P. 197; Ry. & M. 49, N. P.

*Re Bourne, Ex p. Bird* (1851), 4 Q. B. 373. *Mentid. Dumont v. V* 17 L. T. 71

**First bill to be discounted—To take up second bill—Right to recover.**—A., the drawer of a bill of exchange for £50, payable to his own order, being indebted to B. on another bill for £77 10s., for which he, A., was bound to provide, indorsed the £50 bill to B. to enable him to raise money upon it, in order that A. might take up the £77 10s. bill:—*Held*: the £50 bill was an available security in the hands of B. in reduction of his demand on A., & he might recover upon it against the acceptor.—*WALSH v. TYLER* (1817), 2 Stark. N. P.

**Guarantee for advance of less than amount of bill—Right of transferee—To recover full amount of bill.**—A bill of exchange for £300 l. to A. to get it discounted, a banking co. £100 on the bill, upon A. giving the co. for the amount so advanced. A. had no interest in the bill. In an action by A. on the

bill:—*Held*: he was entitled to recover the whole amount, & not merely the amount for which he gave his guarantee.—*REID v. FURNIVAL* (1833), 1 Cr. & M. 538; 2 L. J. Ex. 199; 149 E. R. 513.

*lations*:—*Reid. Jones v. Broadhurst* (1850), 9 C. B. 173; *Cook v. Lister* (1863), 13 C. B. N. S. 543.

**1266. Bill discounted by acceptor—Effect of.**—If the acceptor of a bill discounts it for the drawer, & then re-transfers it, the latter will be liable upon it at the suit of a *bona fide* holder, & the transfer to the acceptor upon discount will operate as an indorsement, although at the time the drawer does not intend to transfer by way of indorsement, being under the impression that the bill is discharged by coming into the hands of the acceptor; nor will the payment of the amount, less the discount, be deemed a payment of the bill by the acceptor:—*Semble*: a bargain between the drawer & acceptor in such a case, that the bill shall not be re-issued or transferred, would bar the action on the bill against the drawer, by a party taking it with knowledge of the fact of such bargain.—*ATTENBOROUGH v. MACKENZIE* (1856), 25 L. J. Ex. 244.

**1267. Bankruptcy of discounter—Before maturity of bill—Balance in favour of transferor—Right of discounter & transferor.**—The drawer of bills of exchange accepted for value discounted them with his bankers, who afterwards became bkpt. before the bills arrived at maturity, having a cash balance belonging to the drawer in their hands. The bills were dishonoured:—*Held*: the drawer was not entitled to have the cash balance in his favour applied in discharge of the amount due upon the unpaid bills, & on payment of the difference, to have those bills delivered up to him, but the bank had a right to obtain payment of such bills from the acceptors, & leave the drawer to prove in respect of his cash balance in the usual way. *Semble*: the doctrine in equity of marshalling assets did not apply.—*Re ROYAL BRITISH BANK, Ex p. BANES* (1857), 28 L. T. O. S. 296.

**1268. Bankruptcy of acceptor—After bill discounted—Right of discounter to charge transferor.**—A bill of exchange payable at the L. bank at N. was presented by the agent of the branch Bank of England at the L. bank for payment, the branch Bank of England having discounted same for P. The bill was presented for payment in the morning, & instead of cash being given for same, it was marked with the initials of the L. bank, signifying, according to the usual custom of bankers, that it would be honoured, & a "credit" was given to the branch Bank of England

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which were the ones in suit dishonoured. The

to be treated:

or loan to deft. co. or as money paid to their use or was the simply one of discount giving the of action on the notes so renewed:—*Held*: the discounting of a bill is in itself standing alone evidence of a purchase.—*BANK OF AUSTRALASIA v. HARRIS* (1845), Res. & Eq. Jud. 55. —AUS.

*as. Rights of person discounting—Against person from whom received.*—The party discounting a bill has, in general, no recourse whatever upon the person from whom he has taken it,

when the latter has not in made himself a party to it.—*ROSS v. COOD* (1850), 7 U. C. R. 64.—CAN.

*n. Bill by partner of non-trading firm—Liability of discounting bank.*—A bank, with knowledge that the partnership is a non-trading one, have no right to discount for one of the partners for his own purposes a promissory note made in favour of the firm, although indorsed in the name of the firm, & will be liable to account to the other partners for his share of the proceeds, in the of circumstances creating an

*GREEN BANK W. L. R. 173; 19 W. L. R. 569; 13 Man. L. R. 675.—CAN.*

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for it to be honoured in exchange after termination of business at four o'clock on same day, & at the usual daily settlement among the bankers at N. Before four o'clock the L. bank discovered the acceptor had stopped payment, & immediately applied to the agent of the Bank of England to cancel the credit note given by the L. bank in the morning. That was refused, but the Bank of England debited its customer P. with the amount of the bill as unpaid. In an action against the Bank of England by P. for the amount, the Bank of England being indemnified by L. bank:—*Held*: (1) on presentation of the bill for payment the initialling it & giving a credit note amounted to more than a mere provisional arrangement made for convenience between the bankers, & subject to a subsequent revocation by the parties; (2) such recognition of the bill of exchange was in the nature of payment; (3) the Bank of England having received payment of the bill, was not entitled to debit the amount thereof against its customer; (4) P. was entitled to recover.—*POLLARD v. BANK OF ENGLAND* (1871), L. R. 6 Q. B. 623; 40 L. J. Q. B. 233; 25 L. T. 415; 19 W. R. 1168.

*Annotations*:—*Consd.* Deutsche Bank v. Beriro (1895), 73 L. T. 689. *Reid.* Taylor v. Met. Ry. Co., [1906] 2 K. B. 55. *Mentd.* Kitts v. Atlantic Transport Co. (1902), 18 T. L. R. 720.

**1269. ——— Loan secured by discounted bills & by assignment of debts—Application of proceeds of assigned debts.**—Loans were made by M. to K. on the security of bills of exchange drawn by M. & accepted by K. The loans were also secured by the assignment to M. of debts due to K., notice being given to debtors. M. discounted the bills with his bankers. K. filed a liquidation petition, & the bankers proved in the liquidation for the full amount of the bills. The assigned debts not having been collected, it was arranged between M. & the trustees that the latter should collect them, & hold the proceeds without prejudice to M.'s rights. The debts having been collected, the trustee refused to pay over the proceeds to M. unless he would take up the bills:—*Held*: M. was not entitled to the proceeds unless he took up the bills, & the proper order to make was that the trustee should apply the proceeds in discharging M.'s liability upon the bills.—*Re KATTENGELL, Ex p. MANN* (1877), 5 Ch. D. 367; 46 L. J. Bcy. 107; 36 L. T. 840, C. A. *Reid.* Bates v. Wright (1885), 16 Q. B. D. 330.

BANKRUPTCY & INSOLVENCY,  
Vol. V., pp. 1121, 1122.

*See, generally*, BANKERS & BANKING, Vol. III., pp. 257–261.

## SECT. 12.—PLACE OF NEGOTIATION.

**Note made in Scotland—Negotiable in England.**—A promissory note made in Scotland is negotiable in England, & an action may be

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XI. SECT. 12.

(1887).

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to the maker, &  
paid by a third person, at whose  
request the cheque had been given.

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look the cheque in good faith, it not

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it anything to indicate that it  
had been presented & dishonoured:—  
*Held*: after the dishonour of the  
cheque & its return to the maker, it  
ceased to be a negotiable instrument  
& ptl. could not enforce it.—*TRUNK v.*  
*J. BURNETT* (1912), 32 W. L.  
3 W. W. R. 622.—*CAN.*

maintained upon it by the indorsee against the maker.—*MILNE v. GRAHAM* (1823), 1 B. & C. 192; 2 Dow. & Ry. K. B. 293; 1 L. J. O. S. K. B. 91; 107 E. R. 72.

*Annotation*:—*Mentd.* Jefferys v. Boosey (1854), 4 H. L. Cas. 815.

**1271. Foreign note—Negotiable in England—By indorsement.**—A foreign note is negotiable in England by indorsement.—*BENTLEY v. NORTH* (1827), Mood & M. 60, N. P.

*Annotation*:—*Mentd.* Jefferys v. Boosey (1854), 4 H. L.

*See, further*, Part XVIII., Sects. 2, 5, *post*.

## SECT. 13.—TERMINATION OF NEGOTIABILITY.

*See* 1882 Act, s. 36 (1).

**1272. Transfer pending action on bill—Indorsee without notice.**—An indorsee of a bill, without notice that a prior action is pending thereon, may, notwithstanding the pendency of such action, commence an action against same debt.—*COLOMBIER v. SLIM* (1772), 2 Chit. 637.

*Annotations*:—*Consd.* Jones v. Lane (1839), 3 Y. & C. Ex. 281; *Deuters v. Townsend* (1864), 5 B. & S. 613.

**1273. ——— Transferee with notice.**—If ptl. deposit a negotiable instrument on which he is suing, at the same time giving notice of the action, he does not thereby part with his right of action.—*MARSH v. NEWELL* (1808), 1 Taunt. 109; 127 E. R. 773.

— *Consd.* Deuters v. Townsend (1864), 5 B. & S.

**1274. ——— Indorsee with notice.**—Where an overdue bill or note is indorsed after action brought, the indorsee, with notice of the action, has no right of action upon it.—*JONES v. LANE* (1839), 3 Y. & C. Ex. 281; 8 L. J. Ex. Eq. 41; 3 Jur. 265; 160 E. R. 708.

*Annotation*:—*Consd.* Deuters v. Townsend (1864), 5 B. & S. 613.

**1275. ———.**—To an action on an overdue bill of exchange for £25, drawn by L. payable to himself or order 3 months after date, accepted by debt., & indorsed by L. to ptl., debt. pleaded that, before the commencement of the suit, A., being the holder of the bill, commenced an action against debt. upon it, when it appeared, as the fact was, that L. had indorsed the bill, which action was still pending. The plea then averred the identity of the sums claimed in both actions, & that ptl. became the holder of the bill, & L. indorsed same to him after it became due, without consideration & with notice of the pendency of the former action, & of the premises:—*Held*: the plea was bad. *Semble*: the position laid down in some books, that the holder of a bill of exchange who has brought an action on it, cannot transfer it to another indorsee for value so as to enable him to sue, if the indorsee had notice of the pendency of the former action, cannot be supported.—*DEUTERS*

## 208 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### 13.—Termination of negotiability. Sects.

*v. TOWNSEND* (1804), 5 B. & S. 613; 4 New 272; 33 L. J. Q. B. 301; 10 Jur. N. S. 1072; 12 W. R. 1002; 122 E. R. 960; *sub. nom.* *DENTERS v.* 10 L. T. 602.

bills generally, *see* Sect. 6, sub-sect. 1,

**Transfer during currency—To acceptor for value—Indorsee with notice.]—Assumpsit on a bill of exchange, drawn by W. upon & accepted by three debtors, payable to the order of W. & by him indorsed to plaintiff. Plea, that after the making & accepting of the bill by debtors, & before it became due, it was delivered on the day & year when it was accepted to W. & that after it was so accepted & delivered, & while W. was the holder & payee thereof, & before the bill became due, W. indorsed the bill to H. one of debtors, acceptors, with the intention of divesting himself, & whereby he did divest himself of all right, etc., in & to the bill, & of the right of suing thereon, & of indorsing same again, that the bill was so indorsed to H. for valuable consideration, that H. continued to be the holder of the bill from the time when it was so indorsed to him until it was delivered by H. to plaintiff, that the indorsement in the declaration mentioned consisted merely of the last-mentioned delivery of the bill by H. to plaintiff, & that it was never indorsed by W. otherwise than as in the plea mentioned; & that at the time of the delivery of the bill by H. to plaintiff, plaintiff had notice of the premises: *Held*: the plea was bad in substance, as it was no objection to the negotiability of a bill, that during its currency it had become the property of — of — H.**

4 Exch. 1; 10 L. J. Ex. 31; 13 L. T. O. S. 403  
E. R. 1100, Ex. S. C.

14 M. & W. 831.

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*Miller* (1810), 2 C. B. 895; *Woodbridge*  
13 Q. B. 470; *Bush* 11 C. B.

*See, further*, Part XIV., Sect. 3,

### 14.—RESTRAINT OF NEGOTIATION.

**By agreement or conditions affecting delivery & negotiation.]—See Part VIII., Sect. 4, ante.**

**1277. By injunction—Illegal consideration—Procuring marriage.]—Plaintiff gave debtor a note for £2,000 for undertaking to procure him a marriage. The fact being supported by an affidavit, the court made an order on debtor to keep the note in his own possession, & not assign or indorse it over, but would not extend the injunction so far as to prevent him from proceeding at law.—*SMITH v.* (1747), 3 Atk. 506; 26 E. R. 1126, L. C.**

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#### PART XI. SECT. 14.

**g. By injunction.—Notes discounted at usurious rate.]—On a petition for an injunction to restrain the transfer, etc., of certain promissory notes bearing the signature of petitioner as indorser on the ground that said notes were discounted by respondent, a money-lender, at an exorbitant rate of interest in violation of the law:—*Held*: the notes being negotiable**

instruments & there being suit pending for reduction of the notes & there being no law forbidding the negotiation of notes discounted at a forbidden rate, the petition must be dismissed.—*FREDERICKS v. KAYNE* (1913), 13 Q. B. R. 319.—CAN.

**f. ——— Note obtained by fraud—Whether fear of negotiation must be alleged.]—Plaintiff, on an application to continue an interim injunction to**

restrain negotiation ——— certain ——— alleged that he made the notes upon the false representations of one of debtors. His affidavit stated that he believed that, unless the injunction were granted, debtors would negotiate the notes, but did not state the grounds of his belief:—*Held*: the application should be granted.—*TUCKERSON v. RALDAY* (1913), 19 W. L. R. 733; 1 D. L. R. 32; 1 W. W. R. 461.—CAN.

note obtained at play, upon affidavit, before service of *subpoena*.—*v. BLACKWOOD* (1797), 3 Anst. 851; 145 E. R. 1059.

**1279. ——— Failure of consideration—Goods not delivered.]—Injunction to restrain debtors from negotiating a bill of exchange given for goods not delivered, issued on certificate of bill filed, & to be served with the subpoena.—*PATRICK v. HARRISON* (1792), 3 Bro. C. C. 476; 29 E. R. 653, L. C.**

**1280. ——— Negotiation before notice of failure.]—Where a bill of exchange given for the price of a guaranteed article, which turned out to be worthless, was negotiated by the seller before notice of the failure of consideration, the court refused to set aside the purchase, & order the bill, though not due, to be retired by him on behalf of the purchaser coming for relief after notice that the bill had been parted with, his remedy being at law. *Qu.*: what the result would have been, if negotiation of the bill had followed a notice not to part with it, on the ground of failure of consideration.—*JACKSON v. SHANKS* (1806), 12 Jur. N. S. 917; 15 W. R. 55.**

**1281. ——— Absence of consideration—Balance due to maker of note.]—The solr. to a commission restrained by injunction from negotiating a promissory note that he had received from bankrupt for his bill of costs in procuring his certificate, bankrupt having purchased the debts of many of the creditors, & the solr. being indebted to the estate in such a sum, that the share of it coming to bankrupt standing in the place of the creditors, in respect of the debts so purchased by him, would exceed the amount of the promissory note.—*Re HUNT, Ex p. HARDING* (1817), Buck, 24, L. C.**

*Annotation*:—*Held. Re Barnett, Ex p. Reynolds* (1885), 15 Q. B. D. 169.

**1282. ——— Bill void ab initio.]—Injunction granted to restrain the negotiation of bills of exchange void in their creation.—*LAOYD v. GURDON* (1818), 2 Swan. 180; 36 E. R. 584, L. C.**

**1283. ——— Forged indorsement—Bonâ fide holder.]—Where a bill of exchange has been negotiated by means of a forgery of the name of the payee as indorser, a court of equity will restrain even a bonâ fide holder of the bill from suing the acceptor, & will direct the forged instrument to be delivered up to be cancelled.—*ESDAILE v. LA NAUZE* (1835), 1 Y. & C. Ex. 394; 4 L. J. Ex. Eq. 46; 160 E. R. 160.**

*Munroe v. Bordier* (1849), 8 C. B. 862.

**1284. ——— Bill improperly obtained.]—B. having entrusted C. with certain bills of exchange for collection in America, they came improperly, was alleged, into the hands of D., who instituted proceedings upon them in America. Eventually they came into the possession of E., as comr. in London appointed by the American court to collect evidence as to the pending proceedings, & B. then**



filed a bill against C. & D., both out of the jurisdiction, & E., praying that they might be ordered to bring the bills into ct., & be restrained from negotiating or parting with them:—*Held*: B. had failed to establish a sufficient case for the interference of the ct.—*LONDON & MEDITERRANEAN BANK, LTD. v. STRUTTON* (1869), 21 L. T. 415; 18 W. R. 107.

**1285. — Bill obtained by fraud—Onus on plaintiff—Application of 1882 Act, s. 30 (2).**—On a motion by the acceptor to restrain a holder from negotiating a bill of exchange, the onus is on the acceptor to make out a case of fraud, & the above sub-sect. does not effect or vary the practice of the Ch. Div. in dealing with an application for such an injunction.—*HAWKINS v. TROUP* (1890), 7 T. L. R. 104; *sub nom.* *HAWKINS v. WARD*, [1890] W. N. 203.

Application of 1882 Act, s. 30 (2), generally, see Part X., Sect. 10, sub-sect. 2,

**1286. — Against indorsement—By absconded transferee.**—Suit by assignees of bkpt. against W. & J., to recover the money due upon two promissory notes drawn by W., & made payable to J. The bill alleged, that the money due upon the notes formed part of bkpt.'s assets, which J., the brother of bkpt., had taken possession of, & then lent to W. upon the security of the notes, that J. had absconded, & that the notes were in the hands of plffs., who could not recover upon them at law, as they were not indorsed by J. The bill prayed an injunction to restrain J. from indorsing the notes except to plffs., & from proceeding at law against W. It also prayed for payment by W. to plffs. W., by his answer, admitted, without reserve, his liability upon the notes to J., but he ignored the title of plffs. Plffs. moved for payment into ct. of the money due upon the notes, & for an injunction against J.:—*Held*: as the evidence in support of the motion established a case for an injunction against J., & as W. had admitted his liability to J., the ct. might order the payment of the money by W., without sending plffs. to recover at law by using the name of J.—*GREEN v. PLEDGER* (1844), 3 Haro, 165; 13 L. J. Ch. 213; 8 Jur. 801; 47 E. R. 340. *Annotation*:—*Mentl. Weguelin v. Lawson* (1863), 8 L. T.

**1287. — Against judgment debtor—Garnishee order.**—H., on Nov. 21, 1890, recovered judgment against F., for £26 7s. 10d. & costs. E. was the acceptor of two bills of exchange, each of which was made payable to the order of F. One of the bills was for £62, & was due on Dec. 19, 1890; the other was for £100 & was to become due on Jan. 8, 1891. On an application by H. for a garnishee order against E.:—*Held*: (1) E. should pay to H. £26 7s. 10d. & £3 13s. 6d. for costs, but execution to recover the amounts was not to be issued till after Dec. 19, when the £62 would become payable to F. from E. as acceptor of the first bill, & if that bill was negotiated by F. before same became due, the execution was not to issue until after Jan. 8,

when E. would have to pay F. £100 upon the other bill; (2) an injunction should be granted to restrain F. from negotiating the bills, the injunction to be dissolved upon payment of the judgment debt.—*HYAM v. FREEMAN* (1890), 35 Sol. Jo. 87.

**1288. — Obtained ex parte.**—*Semble*: an injunction may be obtained *ex p.* to stay the negotiation of bills of exchange.—*v. BOZON* (1824), 3 L. J. O. S. Ch. 57.

**Holder with notice of defect.**—Injunction granted *ex p.* to restrain the negotiation of a bill of exchange by a holder, who had given valuable consideration for it, but who had notice that it had been improperly accepted by a partner of plffs., in the partnership name.—*HOOD v. ASTON* (1826), 1 Russ. 412; 38 E. R. 100.

**1290. — Provision for presentment for payment.**—*Held*: an order might be made on an *ex p.* application, for an injunction restraining deft. from negotiating a bill of exchange placed in his hands by plff. for the purpose of being discounted, but care must be taken that the indorser was not discharged, which would be the effect of its not being duly presented for payment.—*ANON.* (1876), 2 Char. Cham. Cas. 4; Blitt. Prac. Cas. 95.

**1291. — Acceptance on faith of bill of lading—Forgery—Indorsee for value—Undertaking to deliver up.**—Bills of exchange in the hands of foreign indorsees for value were accepted in England on the faith of the genuineness of a bill of lading, which was presented to the acceptor with the bills of exchange by the indorsees, but which afterwards proved to have been forged by the drawer. The indorsees were unaffected with notice of the forgery when they obtained the acceptance. In a suit by the acceptor against the indorsees for delivery up of the bills, & an injunction against negotiating or proceeding at law upon them:—*Held*: on defts. undertaking to deliver up the bills in the event of the judgment at law against them, no injunction ought to be granted.—*THIEDEMANN v. GOLDSCHMIDT* (1859), 1 De G. F. & J. 4; 1 L. T. 50; 8 W. R. 14; 45 E. R. 260, L. C. & L. JJ.

*Annotations*:—*Conad. Leather v. Simpson* (1871), L. R. 11 Eq. 398. *Mentl. G. W. Ry. Co. v. London & County Banking Co.*, [1900] 2 Q. B. 464; *Guaranty Trust Co. of New York v. Hannay*, [1915] 2 K. B.

**Whether order disobeyed—By subsequent indorsement.**—*DAY v.* , No. 1149, ante.

**1293. By interim order—Bills subject of action—Bills to be deposited in court.**—*LEWES (EARL) v. BARNETT* (1876), 1 Seton, Judgments & Orders, 7th Ed. p. 713.

## SECT.

## INDORSE

See 1882 Act, s.

**Liability on bill—Satisfaction of limited y.**—Property mortgaged to S. by M., was purchased by plffs.; it was agreed that M. should pay off S. & that plffs. should mtge. the property to M. to secure part of the purchase-money, payable by instalments, for which notes were given. The provided that until S.'s was paid off plffs. were to be

between that mtge. & their mtge. to M. Before S.'s mtge. was paid off M. assigned plffs.' mtge. & notes to W. as security for a debt & became insolvent. S. foreclosed & the property was sold. W. obtained a re-sale on giving a bond to M.'s assignee to bid up to a certain rty for S.'s debt. a portion of M.'s mtge.

& took up their notes to that which with the amount by W. on M.'s debt exceeded now In an action by W. against plffs. on of the remaining notes:—*Held*: W. should be restrained from proceeding on or transferring the remaining notes. *v. WICK* (1874), 11 E. D.



**Sub-sects. 1, 2 & 3, A.]****1.—FORM.**

**2194.** "I hereby assign this draft & all benefit of money secured thereby to."—A note was indorsed as follows: "I hereby assign this draft, & all benefit of the money secured thereby, to J., of etc., & order the within-named T., the maker of the note, to pay him the amount thereof, & all interest in respect thereof. H."—*Held*: the indorsement did not require a stamp.

It is no agreement; it amounts to nothing more than an ordinary indorsement of the note, but it is in a very elaborate form (GURNEY, B.).—*RICHARDS v. FRANKUM* (1840), 9 Q. & P. 221; *affd.* on other points, 8 C. 6 M. & W. 420.

*Annotation*:—*Mentd.* Mason v. Farnell (1844), 12 M. & W. 674.

**1295.** "I bequeath, pay the within contents to S. at my death."—A., the payee of certain promissory notes, delivered the notes to S., saying, "I give you these notes," & adding that S. should have them at his death, but that he should like to be master of them as long as he lived. The notes were then indorsed as follows: "I bequeath, pay the within contents to S., or his order, at my death"; & the indorsement was signed by A.

attested by one witness:—*Held*: this was not a gift *inter vivos*, but an attempted testamentary gift, & the notes formed part of A.'s estate at his death.—*Re PATTERSON'S ESTATE, MITCHELL v. SMITH* (1864), 4 D. G. J. & Sm. 422; 4 New Rep. 310; 33 L. J. Ch. 500; 10 L. T. 801; 12 W. R. 941; 40 E. R. 982, L. J.

**SUB-SECT. 2.—WHO MAY INDORSE.**

**1296. Administrator.]**—A promissory note assigned to A. or his order, may be ind

**PART XI. SECT. 15, SUB-SECT. 1.**

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within note & all right, title & interest in the said indorsement under the Act.—*EDMAN v. BARRIS* (1915) 3 W. W. R. 817; R. 372.—CAN.

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26 U. C. R. 251.

b. "I guarantee the payment of the within."—Whether indorsement or guarantee.—"I guarantee the payment of the within," indorsed on a note, over the signature of the payee:—*Held*: an indorsement of the note, & not a guarantee or collateral engagement for its payment.—*WALKER v. O'BRIEN* (1861), 7 Q. L. J. O. R. 306.—CAN.

c. — Signature followed by word "witness"—Whether indorsement quali-

*fed.*—Plff., the holder of five promissory notes, sued deft. who had indorsed them thus: "For value received I guarantee the payment of the within notes (signed) J. McKale,

that word was to be taken as descriptive & in no wise to exclude or limit liability. *v. MCKALE* (1912), Q. R. 41 S. C. 340; 5 D. L. R. 237.—CAN.

d. Bill payable to "Union Bank of A."—The fact that the bill was to the order of Bank of Australia & by the "Union Bank of Ltd.," does not make the bill payable to the bank.—*HADLEY & Co. v. HENRY* (1896), 23 V. L. R. 230.—AUS.

Note payable to firm.—*Pleas.*—In a declaration on a bill, an indorsement was alleged to be L. & B., under the name of L. & B., who indorsed to plffs.; deft. demurred specially because the Christian names of L. & B. were not set out: the demurrer was frivolous.—*BANK OF MONTREAL v. HOPKINS* (1844), 1 U. C. R. 418.—CAN.

f. — — — — —]—In a declaration on a promissory note it was averred that it was made payable to two of defts., stating their names, under the name, style, & firm of B. & Co., & that these two defts., naming them, indorsed to plffs. Deft. demurred, because the indorsement should have been stated to have been by the firm:—*Held*: the demurrer was frivolous.—*PARKER v. CLARK* (1850), 1 P. R. 152.—CAN.

over by his administratrix.—*RAWLINSON v. STONE* (1746), 3 Wils. 1; 2 Burr. 1225; 95 E. R. 899; *sub nom.* *ROBINSON v. STONE*, 2 Stra. 1260.

*Annotation*:—*Consd.* Edie v. East India Co. (1761), 2 Burr.

**1297.** ———.]—A promissory note was drawn for the accommodation of A., who transferred it to B. & C., without indorsement, for valuable consideration, & afterwards becomes bkpt., & died intestate:—*Held*: B. & C. might recover against the drawer, the note having been indorsed six years after it was due by B. to B. & C., B. having for that purpose procured letters of administration to the effects of A.—*WATKINS v. MAULE* (1820), 2 Jac. & W. 237; 37 E. R. 618.

*Annotations*:—*Consd.* Bromage v. Lloyd (1847), 1 Exch. 32; Edge v. Humford (1862), 31 Beav. 247. *Fold.* Walters v. Neary (1904), 21 T. L. R. 146. *Reid.* Whistler v. Forster (1863), 32 L. J. C. P. 161. *Mentd.* Bignold v. Springfield (1839), 7 Cl. & Fin. 71; Bank of Bengal v. Fagan (1849), 5 Moo. Ind. App. 27.

**1298. Executor.]**—*BISHOP v. CURTIS*, No. 1250, ante.

**1299. After bankruptcy — Bankrupt.]**—If a trader deliver over a bill for a valuable consideration to another & forget to indorse it, he may indorse it after he has become a bkpt., & in such case the evidence of one partner, that his partner had told him at the time he had paid it away, is admissible.—*SMITH v. PICKERING* (1791), Peake, 69, N. P.

*Annotations*:—*Consd.* Nichols v. Clent (1817), 3 Price, 547. *Fold.* Watkins v. Maull (1820), 2 Jac. & W. 237. *Reid.* Burn v. Carvalho (1834), 1 Ad. & El. 893; Whistler v. Forster (1863), 32 L. J. C. P. 161.

**1300.** ———.]—One who had committed a secret act of bkpey. procured deft. to lend him his acceptance, & as a security pledged the lease of his house, & having drawn the bill payable to his own

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Plff. sued for the amount of a

that the cheque was drawn to the order of V. & that the declaration did not state the date of the indorsement:—*Held*: in law it was not essential to the validity of a bill of an exchange that an indorsement should be dated.—*CHAUREST v. PROVOST* (1914), 16 Q. P. R. 153.—CAN.

**PART XI. SECT. 15, SUB-SECT. 2.**

h. Agent of Payee of note.]—The agent of an ance co. having a legal interest in, being entitled to maintain an action on a promissory note in payment of a life insurance premium, made to him by name, with the addition of his

ment.—*McDONALD v.*  
25 N. S. R. 440.—CAN.

note held by a who  
ceedings under Insolvent  
Act, 21 Vict. c. 17, is not divested by the publication of the notice calling a meeting of creditors, & he may afterwards transfer the note; neither is his right divested by a composition with his creditors under the Act.—*CAMPBELL v. GILBERT* (1862), 5 All. 430.—CAN.

**1300 H.** ———.]—Deft., in ignorance of P. being an undischarged insolvent, made a promissory note to him, which P. indorsed for value to plff., who was fully aware of P.'s insolvency:—*Held*: plff. was entitled to recover.—*PARKIN v. BAKER* (1878), 19 C. P. 295.—CAN.

order, indorsed it to pltf. for a valuable consideration, without notice of his bkpcy. In an action by the pltf. as indorsee against the acceptor:—*Held*: the latter could not defend himself on the ground of the drawer's bkpcy. at the time of such indorsement.—*ARDEN v. WATKINS* (1803), 3 East, 317; 102 E. R. 619.

*Annotation*:—*Consd. Willis v. Freeman* (1810), 12 East, 656.

**1801.** ———.]—Indorsement after bkpcy. of a security, delivered to a creditor previously, is valid.—*Ex p. GREENING* (1806), 13 Ves. 206; 33 E. R. 272, L. C.

**1802.** ———.]—As an accommodation bill does not pass under a commission of bkpcy. against the payee, he may indorse it after an act of bkpcy.—*WALLACE v. HARDACRE* (1807), 1 Camp. 45, N. P.

*Mentd. Williams v. Bayley* ———, L. R. 1 H. L. 200; *Jones v. Merionethshire Permanent Bldg. Soc.*, [1892] 1 Ch. 173.

**1803.** ———.]—Pltf. declared as indorsee of a bill of exchange drawn by J. payable to his own order. The defence was that J. had committed an act of bkpcy. before the indorsement. The bill was delivered to the indorsee, with the intent of transferring the property in it to him, more than 2 months before the commission, but the indorsement was not in effect written upon it till within 2 months:—*Held*: the writing of the indorsement had reference to the delivery of the bill.—*ANON.* (1808), 1 Camp. 492, N. P.

**1804.** ——— *Trustee in bankruptcy.*—Assignees ordered to indorse a bill, which bkpt., before his bkpcy., had transferred to petitioner for a valuable consideration, but without indorsement, the indorsement to be special, so as to secure the assignees from personal liability.—*Re EVEREST. Ex p. MOWBRAY* (1820), 1 Jac. & W. 428; 37 E. R. 438, L. C.

*Annotations*:—*Dist. Re Salisbury, Ex p. Brown* (1824), 1 Gl. & J. 407. *Held. Re Gibbs, Ex p. Price* (1844), 3 L. T. O. S. 426.

**1805.** ———.]—Assignees ordered to indorse a bill, which bkpt. had deposited without his indorsement.—*Re DEAN, Ex p. RHODES* (1837), 2 364; 3 Mont. & A. 217, Ct. of R.

.]—A bill drawn on, & accepted by C., & made payable to A., was deposited by A. with B., to secure a debt due from A. to B. No notice of the deposit was given to C., & the bill was not indorsed by A. to B. A. afterwards became bkpt.:—*Held*: B. was entitled to the bill, & to an order that the assignees might indorse it to him without recourse.—*Re GIBBS, Ex p. PRICE* (1844), 3 Mont. D. & De G. 596; 13 L. J. Bcy. 15; 2 L. T. O. S. 477; 8 Jur. 545, Ct. of R.

933; *Re Goets, Jonas, Ex p. Trustees* (1808), 78 L. T. Jur.

**1807.** ——— *Payee*—Before liquidation resolutions registered.]—A bond *fade* holder for value of promissory notes, which were unindorsed at the date of tender for proof, procured the necessary indorsement before application to register the resolutions:—*Held*: he was entitled to prove for the full amount of his debt. & the time of the indorsement of the notes was immaterial.—*Re ESLICK, Ex p. PIKE* (1879), 40 L. T. 529.

**1808.** *Directors*—"Per pro." of company.]—A declaration on a bill of exchange against the acceptor alleged an indorsement by the drawer to the H. Co., & by the co. to pltf. Plea traversing the indorsement by the co. The bill had been indorsed in blank by the drawers, & afterwards delivered by them to the co. It was indorsed by two directors, "per pro." of the co., to pltf. By the deed of settlement & resolutions which were duly registered, the directors had no power to indorse the bill:—*Held*: whether or not the co. was bound, the indorsement being sufficient to transfer the property & right of suit on the bill, the allegation in the declaration was proved.—*SMITH v. JOHNSON* (1858), 3 H. & N. 222; 27 L. J. Ex. 368; 31 L. T. O. S. 120; 157 E. R. 453.

Indorsement "per pro." generally, see Part Sect. 4, *ante*.

Indorsement in representative capacity.] 1882 Act, s. 31 (5); Part IX., Sect. 5, *ante*.

Bill payable to order of two or more payees. See Sect. 15, sub-sect. 3, D., *post*.

#### SUB-SECT. 3.—REQUISITES OF VALID

A. Must be written on instrument and be

See 1882 Act, ss. 32 (1) (4), 91.

Signature essential to liability.]—See Part IX., Sect. 2, *ante*.

Necessity for signature—To complete instrument.]—See Part II., Sect. 1, sub-sect. 2, *ante*.

To make acceptance valid.]—See Part VI., sub-sect. 2, *ante*.

**1809.** Must be written on instrument—Writing on face of banknote.]—The writing across the of a banknote is properly called an indorsement. *R. v. BIGG* (1717), 3 P. Wms. 419; 1 Stra. 18; 1 E. R. 1127.

of

of a to the note to M., the al manager the bank, under the :—*Held*: M. had no title to the (1861), 12 L. C.

as a trade the name of the assocn. of two or more of its

so to it. 19 H. L.—*CAN.*

1. Public officer of joint bank—After outlawry.]—A no. officer of a

for a to the outlawed an indictment for the outlawry, & while it was in force, he indorsed

One payable to (indorser.)—Pltf. sued on a note made payable to M. or his deceased, y of

*COOK* (1847), 3 Thom.

In recognition by husband.)—: a deft.'s indorsement made his wife, though in her own

but afterwards would make him liable to an the bill.—*ROSS v. CORD* (L. C.)

#### PART XI. SECT. 15, SUB-SECT.

is favour of by a stamp which purports to stamp of the co., is by the co., to provisionally on the note without liquid proof of the co. it is not rests upon deft. stamp that



## . 3, A. &amp; B.]

(1812), 16 East, **Monid.** East London Waterworks Co. v. Bailey (1827), L. J. O. S. C. P. 175; **Beverley v. & Coke Co.** (1837), 4 Ad. & El. 829; **Indra Co.** (1839), 3 Bing. N. C. 262; **Doe d. Canal Navigations v. Bold** (1847), 11 Q. B. 127.

**1810.** — Writing on face of bill. — The writing of his name by an indorser on the face of a bill of exchange is a good indorsement. — **YOUNG v. GLOVER & GLOVER** (1857), 3 Jur. N. S. 637.

**1811.** — Writing on face of note. — Money was lent to one, to secure repayment of which he & two others made a joint & several promissory note. The lender required payment some years after the date of the note, but upon the makers procuring a new name to the note, he forbore payment. The new name was written on the face of the note, but not under the former names, & had its date appended: — **Held**: the third name, though on the face of the note, was added as an indorsement, & for the purpose of adding a person with fresh liability, & not as a new maker.

The signature, although it was written upon the face of the note, was intended to have the sense & effect of an indorsement, & it was as effectual as an indorsement as if it had been written upon the back (**Knight Bruce, L.J.**). — **Re SMITH, Ex p. YATES** (1837), 2 De G. & J. 101; 27 L. J. Bey. 9; 30 L. T. O. S. 282; 4 Jur. N. S. 649; 6 W. R. 178; 44 E. R. 661, L. J.

**Annotation.** — **Conad. Leman v. Kirkman** (1839), 6 Jur. N. S. 17.

**1812.** — Writing in pencil. — An indorsement upon a promissory note, written with a pencil, is a valid indorsement within the custom of merchants. — **GEARY v. PHYSIC** (1826), 5 B. & C. 234; 7 Dow. & Ry. K. B. 653; 4 L. J. O. S. K. B. 147; 108 E. R. 8.

R.

**1813. Must be signed—Name misspelt.** — A bill of exchange was indorsed by the payee to the M. bank, who indorsed it, & added to their indorsement the following memorandum: "In need, N. P. & Co." After several other blank indorsements, the bill was indorsed in blank to the L. bank, who indorsed it in blank to plff., who indorsed it specially, "Pay Terney & Farley, or order," who indorsed it in blank by writing thereon, "Thomas Terney & Farley." After passing through several other hands, the bill when due was duly presented at S. A. & Co., London, bankers, where it was made payable by the acceptance, & was dishonoured, the answer being "no." On the same day it was presented at P. & Co.'s London, bankers, where it was by the P. & Co. refused to pay it, solely on the ground

T. P. D. 781.

**XI. SECT. 14, SUB-SECT. 2.**

**1814. General rule.** — Delivery, actual or constructive, is essential to transfer the ownership of property in a promissory note or bill of exchange & the mere indorsement of the document without such delivery is not sufficient to pass the dominion. — **MILL & BONE v. BENJAMIN BARNES' TRUSTEES** (1876), Buck. 115; 1 Blac. & Sim. 169. — 2. A.P.

**1815.** — **Pleading.** — In an action on a foreign bill of exchange drawn by deft. in the U.S. of America directing

of the irregularity of Terney & Farley's indorsement. The custom of London bankers was admitted to be to refuse all bills, even their own acceptances, where there was a letter wrong in any indorsement. The bill was returned with due notice to plff., who gave due notice of dishonour to the L. bank. At the L. bank the irregularity was pointed out to plff., who, by their recommendation, sent the bill to Terney & Farley, who lived in Ireland, to rectify the mistake, & the bill, with the proper indorsement on it, was then sent up to London, & again presented at S. P. & Co., who then refused to pay it as being out of time: — **Held**: the L. bank were liable to plff. on the bill.

The bill was indorsed by the proper parties, the presentment was regular, & due notice was given to the indorsers. It would be monstrous to say that the misspelling prevented the right of the parties to recover (**VAUGHAN, B.**). — **LEONARD v. WILSON** (1834), 2 Cr. & M. 589; 4 Tyr. 3 L. J. Ex. 171; 149 E. R. 895.

**Annotation.** — **Reid. Walker v. Macdonald** (1848), 2

**1814.** — Transaction amounting to attempted testamentary gift. — **Re PATTERSON'S ESTATE, MITCHELL v. SMITH**, No. 1295, ante.

**B. Delivery.**

**Necessity for delivery—In general.** — See Part VIII., Sect. 2, ante.

— To complete acceptance. — See Part VI., Sect. 3, sub-sect. 4, ante.

**1815. General rule.** — An indorsement is not complete without delivery. — **DUNBAR v. KAYE** (1849), 13 L. T. O. S. 119.

**1816. What amounts to delivery—Manual delivery.** — In order to constitute a legal & valid indorsement of a bill of exchange, the holder must not only write his name on the back thereof, but he must also manually deliver the bill to the indorsee. — **SAINSBURY v. PARKINSON** (1851), cited 7 H. & N. at p. 692; 18 L. T. O. S. 198, N. P.; subsequent proceedings, 18 L. T. O. S. 227.

**Annotations.** — **Conad. Emmett v. Tottenham** (1853), 8 Exch. 884; **Ancona v. Marks** (1862), 7 H. & N. 686, where **POLLOCK, C.B.**, having disavowed having ruled as above & stated that the facts were incorrectly reported, sent for his note, & said: "All that case decides is this, that if a person merely lends his name to be used as plff. in an action, does not employ the attorney, is under no for costs, in fact is *vox et preterea nihil*, the bill to be indorsed to

**With intent to transfer.** — An indorsement is made where the bill is delivered in order to give effect to it, for this is a negotiation, which acceptance is not.

The purpose of an indorsement is to pass the property in the bill, & that purpose is not

one M. to pay to plff.'s order \$1,000, which bill had been dishonoured on being presented for acceptance, the main defence was that the writ of summons did not aver that the bill became due or payable within 6 months before action brought or show any right to sue upon the bill by delivery or otherwise: — **Held**: the averment of delivery was unnecessary; & the right to sue sufficiently appeared by the averment that the money mentioned in the bill was not paid. — **DUNBAR v. KAYE** (1849), 13 L. T. O. S. 119. — **HL.**

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until actual or constructive delivery (COLERIDGE, J.).—*R. v. BIRCH, WILDE v. SHERIDAN* (1852), *Bail Ct. Cas.* 56; *Saund. & M.* 22; 21 *L. J. Q. B.* 260; 19 *L. T. O. S.* 126; 16 *Jur.* 426.

*Annotations*.—*Expi.* (*Chapman v. Cottrell* (1865), 3 *H. & C.* 141; *Mentd.* *Trevor v. Wilkinson* (1875), 31 *L. T.* 731.

1318. ———.]—In order to constitute a valid indorsement of a bill of exchange as against the indorser, there must be a writing of the name of the holder, & a manual delivery by him of the bill with the intention, not only to pass the property in it, but to guarantee the payment if the acceptor makes default, & evidence of facts showing the absence of this intention is admissible under a traverse of the indorsement.—*DENTON v. PETERS* (1870), *L. R.* 5 *Q. B.* 475; 23 *L. T.* 281.

1319. ——— *Bill placed amongst securities held for indorsee—Without knowledge of indorsee.*]—A. & B. carried on business in partnership. The firm being indebted to C., A., who acted as C.'s agent, with the concurrence of B., indorsed a bill of exchange in the name of the firm, & placed it amongst the securities which he held for C., but no communication of the fact was made to C.:—*Held*: a good indorsement by A. & B.—*LYSAGHT v. BRYANT* (1850), 9 *C. B.* 46; 10 *L. J. C. P.* 160; 14 *L. T. O. S.* 351; 137 *E. R.* 808.

1320. ——— *Delivery to French post office.*]—The rules of the French Post Office permitted a person who had posted a letter to recover it at any time before it was despatched from the office where it was posted on complying with certain forms. A letter containing bills of exchange, indorsed to the person to whom the letter was addressed, was posted in a French post office:—*Held*: the property in the bills did not pass to the indorsee till the letter had left the office where it was posted.

C., a banker at Lyons, having received from D. a bill drawn on a firm in Milan, posted a letter addressed to D. in England, inclosing five bills of exchange indorsed to him. Before the mail left Lyons C. received a telegram from D.'s agent at Milan, stating that the drawee of the bill refused to accept it, & telling him not to send any remittance to D. C. applied to the post office for a return of the letter containing the five bills, but through a mistake of his clerk the letter was not returned to him, but was dispatched to England & delivered to D., who soon afterwards filed a petition for liquidation:—*Held*: (1) as C. had shown an intention of recalling the letter before it left Lyons, which had only been frustrated by a mistake of his clerk, the property in the bills did not pass to the indorsee, & they must be given up to C.; (2) (*MELLISH, L.J.*) even if the property in the bills had passed where the letter was posted, the delivery of the bills was revoked by both parties, & the fact of their not actually getting back into the manual possession of the indorser through a mistake of the clerk made no difference.

*D. v. WARE, Ex p. CORE* (1873), 9 *Ch. App.* 27; 43 *L. J. Rey.* 19; 29 *L. T.* 598; 38 *J. P.* 22 *W. R.* 39; 17 *Sol. Jo.* 809, *L. C. & L. J.*

*Annotation*.—*Mentd.* *Vaughan v. Halliday* (1874), 30 *L. T.* 741.

1321. ——— *To whom—Servant.*]—A parcel was made up by a banking house, sealed, & addressed to another banking house, containing cash notes & cheques of the latter, & bills of exchange, specially indorsed by the former, to make up a

balance due from them on their general account, & deposited, after the bank was shut, with a woman servant left in the care of the banking house, to be given on the next morning to the postman, who was in the habit of calling for such parcels before banking hours:—*Held*: (1) such circumstances did not amount to a delivery of the parcel to the persons to whom it was addressed, or their agent; (2) *aliter* if delivered to the postman.—*R. v. LAMPTON* (1818), 5 *Price*, 428; 146 *E. R.* 654.

—*Raid.* *Brounager v. Lloyd* (1847), 1 *Exch.* 32.

1322. ——— *Agent of drawer.*]—A., resident abroad, remitted a bill to B., his agent in England, drawn by A., & specially indorsed by him to C., with whom his children were at school, in payment of C.'s account for their board & education. B. got the bill accepted by the drawees, & sent a letter by post to C., stating that he had received a commission from A. to pay her some money on account of his children, & desired to be informed when & how it should be delivered. While the bill remained in B.'s hands, he received directions from A. to keep it, & the proceeds, in his hands, & to have a fair investigation into C.'s accounts, & after such investigation, to pay her what might be due to her. No such investigation took place, & B. detained the bill:—*Held*: C. could not recover it in trover from B.—*BRIND v. HAMPSHIRE* (1836), 1 *M. & W.* 365; 2 *Gale*, 33; *Tyr. & Gr.* 790; 5 *L. J. Ex.* 197; 150 *E. R.* 475.

—*Raid.* *Marston v. Allen* (1841), 8 *M. & W.* 1; *Bank of Bengal v. Macleod* (1849), 5 *Moo. Ind. App.* 1.

1323. ——— *Indorsee as agent.*]—*Against acceptor of a bill of exchange drawn by F., & by him indorsed to plff. Plea, that F. indorsed it in blank, & delivered it to plff. as the agent of R., to whom F. was indebted, for the purpose & on the terms that plff. should deliver it to R. on account of the debt, that plff. received it as such agent only, & for such purpose, etc., & without consideration, that plff. detained the bill in breach of his duty & in fraud of R., who claimed the bill, dissented from the action, & required debt, not to pay the amount to plff.:—*Held*: as the plea showed no delivery to plff. as indorsee, it amounted to a constructive denial of the indorsement to him, & was good in substance, though bad on special demurrer.—*ADAMS v. JONES* (1840), 12 *Ad. & El.* 455; 4 *Per. & Dav.* 174; 9 *L. J. Q. B.* 407; 113 *E. R.* 884.*

—*Appl.* 494. *Const. Jones v. Corbett* (1842), 2 *Hall v. Ingestre* (1848), 12 *Q. B.* 317. *v. Little* (1848), 9 *Q. B.* 602. (1847), 1 *Exch.* 32; *Brown v.* (1848), 6 *C. B.* 336; *Bank of Bengal v. Macleod* (1849), 5 *Moo. Ind. App.* 1; *Harmer v. Steele* (1849), 4 *Exch.* 1.

Unauthorized agent—*Ratified principal.*]—An action may be maintained by a person as the holder of a negotiable instrument, notwithstanding he has no real interest in it, & never was the actual holder. It if has been indorsed & delivered to some person professing to act as his agent, although without his knowledge, & he subsequently adopts the acts of the assumed that is sufficient title, although such is after action brought in his name without his knowledge.—*ANCONA v. MARKS* (1862), 7 *H. & N.* 686; 31 *L. J. Ex.* 163; 5 *L. T.* 8 *Jur. N. S.* 516; 10 *W. R.* 251; 158 *E. R.* *Partners v. Lambert*

K. . 4.

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B.

**1825. — By whom — Bank official to another bank official.]**—Declaration on a bill of exchange drawn by J. upon & accepted by deft., alleging that J. indorsed it to E., & E. indorsed it to pltf. Plea, that J. did not indorse the bill to E. At the trial, J. proved that the name J. written on the back of the bill was written by himself, that he had received the bill as the accountant to the I. bank, for a debt due to the bank, & that after writing his name on it he had delivered it to W., who was also employed in the bank, to be kept by him for the bank. E. proved that he had received the bill from W., as he said, for value, & indorsed & delivered it for value to his father, pltf. Deft. proposed to controvert that, & to show that both E. & pltf. received the bill with full knowledge of the fraud committed by W. in handing over the bill. The judge rejected the evidence as inadmissible under the plea denying J.'s indorsement, & pltf. obtained a verdict:—*Held*: the evidence tendered ought to have been received, as, if the facts stated had been fully proved, the jury ought to have found for deft. on the issue that J. did not indorse the bill to E., for although there was an indorsement on the bill, there was no valid delivery by J., or by any authority from him, & so no complete transfer by indorsement to E.—**MARSTON v. ALLEN** (1811), 8 M. & W. 491; 1 Dowl. N. S. 412; 11 L. J. Ex. 122; 151 E. R. 1134.

*Annotations.* *Distd.* *Hayes v. Caulfield* (1843), 5 Q. B. 81. *Appl.* *Bell v. Inglestre* (1848), 12 Q. B. 317. *Distd.* *Robinson v. Little* (1818), 9 Q. B. 602. *Consd.* *Palmer*

63. *Consd.* *Smith v. Johnson* (1838), 27 L. J. Ex. 149. *Law v. Parnell* (1839), 7 C. B. N. S. 282; *Re North British Australasian Co., Ex p. Swan* (1859), 7 C. B. N. S. 302. *Boydell v. Eckstein* (1846), 7 L. T. O. S. 8. *De Winton, Gay v. Lander* (1848), 8 C. B. 1. *Hoguel v. Macleod* (1849), 5 Moo. Ind. App. 1. *Ingham v. Primrose* (1850), 28 L. J. C. P. 394; *Bradlaugh v. De Rin* (1868), L. R. 3 C. P. 538; *Arnold v. Cheque Bank, Arnold v. City Bank* (1876), 1 C. P. D. 378. *Mentd.* *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603.

**1826. — Executor.]**—H. indorsed a promissory note, but did not deliver it. After the death of H., his exor., delivered the note to pltf.:—*Held*: pltf. had no title to sue on the note.—**BROMAGE v. LLOYD** (1847), 1 Exch. 32; 5 Dowl. & L. 123; 16 L. J. Ex. 257; 9 L. T. O. S. 201; 154 E. R. 14.

**1827. — Discount agent.]**—Deft., money, desired T., a discount agent, to him £100 on discount. T. asked for & deft. gave T. his cheque for £100, payable to T. or bearer, saying that T. must get him the money "by hook or by crook." T. then said he would see a friend, & try to get deft. the money, & he afterwards obtained the money from pltf., handed him the cheque, paid over the money to deft., & at the same time received £15 from for discount, of which he kept £7 & paid to pltf. Deft. afterwards requested time for of the cheque, & T., without referring

to pltf., gave time. Deft., requiring still further delay, wrote to T., "Tell your friend I want his money till Christmas, & am willing to pay for the accommodation. Let me know what he will do for me." During the transactions, T. did not mention any lender by name to deft. In an action of debt on the cheque, averring delivery of it to pltf., plea, that deft. delivered the cheque to T., that, save as aforesaid, there never was any delivery of it by deft., & that T. delivered it to pltf.; without this, that deft. delivered it to pltf. in manner, etc.:—*Held*: on the above evidence, a jury was warranted in finding a delivery of the cheque by deft. to pltf.—**SAMUEL v. GREEN** (1847), 10 Q. B. 262; 8 L. T. O. S. 449; 16 L. J. Q. B. 239; 11 Jur. 607; 116 E. R. 102.

**1828. — — — — —.]**—The drawer of a bill of exchange, which had been accepted, wrote his name across the back of the bill & delivered it to A. to get discounted, who instead thereof, while the bill was running, deposited it with B. as security for money advanced to himself, without fraud on the part of B.:—*Held*: that was a valid indorsement of the bill by the drawer to B.—**BARBER v. RICHARDS** (1851), 6 Exch. 63; 20 L. J. Ex. 135; 16 L. T. O. S. 344; 155 E. R. 455; *sub nom.* **PALMER v. RICHARDS**, 2 L. M. & P. 1; 15 Jur. 41.

**1829. Time of delivery—After bankruptcy.]**—In an action by the holder of a promissory note, indorsed generally by the payee, to a plea that the payee indorsed it after he became bkpt., pltf. replied that he *bonâ fide* took & received the note before the payee became bkpt., without notice of any act of bkpcy., & not by way of fraudulent preference. It appearing that the payee indorsed the note in blank before he became bkpt., to a person who delivered it after the bkpcy. to pltf.:—*Held*: deft. was entitled to the verdict on the issue.—**GREEN v. STEER** (1841), 1 Q. B. 707; 1 Gal. & Dav. 499; 10 L. J. Q. B. 332; 113 E. R. 1302.

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C. Must be Instrument.

Act, s. 32 (2).

**General rule.]**—A bill of exchange cannot indorsed over for a part only of the money due thereon.—**HAWKINS v. CARDY** (1698), 1 Ld. Raym. 360; Carth. 466; 1 Salk. 65; 12 Mod. Rep. 213; 91 E. R. 1187.

*Annotation.*—*Mentd.* *Edie v. East Indian Co.* (1761) 2 Burr. 1216.

D. Instrument payable to Order of Two or More

1882 Act, s. 32 (3).

**1881. Must be indorsed by all payees.]**—When two or more persons are the payees of a bill of exchange & there is no partnership between them, of one will not bind the rest, nor

**PART XI. SECT. 15. SUB-SECT**

D.

1. Must be indorsed by all;

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make the bill negotiable.—*CARVICK v. VICKERY* (1783), 2 Doug. K. B. 653, n. ; 99 E. R. 414.

1332. —.]—Where a bill of exchange was made payable to A., B., C., D., or order extrixes, & an indictment charged that prisoner forged on the back of the bill a certain forged indorsement as follows, naming one of the extrixes :—*Held* : a forged indorsement within 1 Geo. 4, c. 86, s. 3.—*R. v. WINTERBOTTOM* (1845), 2 Car. & Kir. 37 ; 1 Den. 41 ; 5 L. T. O. S. 40 ; 9 J. P. 375 ; 1 Cox, C. C. 164, C. C. R.

*Annotation* :—*Mentd.* R. v. Illidge (1849), 2 Car. & Kir. 871.

Who may indorse generally, *see* Nos. 1296 *et seq.*, *ante*.

#### E. Time of Indorsement.

1333. Presumption as to date—Indorsement undated.]—Where an indorsement bore no date :—*Held* : it was properly left to the jury to determine, from the circumstances attending the transfer of the bill, the time at which the indorsement was made.—*ANDERSON v. WESTON* (1840), 6 Bing. N. C. 296 ; 8 Scott, 583 ; 9 L. J. C. P. 194 ; 4 Jur. 105 ; 133 E. R. 117.

*Annotations* :—*Consd.* Potez v. Glossop (1848), 2 Exch. 101. *Reid.* Morgan v. Whitmore (1851), 6 Exch. 716 ; *Roberts v. Bethell* (1852), 22 L. J. C. P. 60. *Mentd.* Davies v. Lowndes (1843), 6 Man. & G. 471 ; *Angell v. Worsley* (1849), 12 L. T. O. S. 428 ; *Butler v. Mountgarrett* (1859), 7 H. L. Cas. 633.

*See, generally*, Part IV., Sect. 1, *ante*.

1334. Before bill drawn.]—*Held* : no objection to the validity of a bill of exchange, that the acceptance & indorsement were written before the bill was drawn, notwithstanding the indorsement was made by a stranger to the acceptor.—*SCHULTZ v. ASTLEY* (1836), 2 Bing. N. C. 544 ; 1 Hodg. 425 ; 2 Scott, 815 ; 5 L. J. C. P. 130 ; 132 E. R. 212.

*Annotations* :—*Consd.* Stocssiger v. S. E. Ry. Co. (1854), 3 E. & R. 549. *Appld.* Harvey v. Cane (1876), 34 L. T. 64. *Consd.* Baxendale v. Bennett (1878), 3 Q. B. D. 525 ; *London & South Western Bank v. Wentworth* (1880), 5

1331 III. —.]—Where a promissory note has been made in favour of two payees, one of whom indorses it to the other, the indorsee cannot sue on the note as indorsee or as one of two joint payees. He may, however, maintain a suit, in respect of the amount due under the note, as assignee of the chose in action. Though such an indorsement cannot operate as an indorsement under the law merchant, it may be relied on as evidence of an assignment by way of release in favour of the indorsee.—*MUHAMMAD K. HALLY v. RANGA RAO* (1901), 1 L. R. 24 Mad. 634.—IND

#### PART XI. SECT. 15, SUB-SECT. 3.

—In an action on a

by declaration should allege that the note was indorsed before it became

c. 1. & c. 3. the declaration  
as an averment of time  
the word afterwards given in  
the form of declaration :

RYAN C. R. 426.—CAN.

vident.]—  
when a pro-  
in blank &

transferred by the payee is admissible.  
—*INSKILL v. LAFORREST* (1897), Q. R. 7  
Q. B. 456.—CAN.

order of admissible

to show that an indorser, whose name  
that of the payee, really  
the latter, as surety for  
the maker to the payee, although the  
name of the payee appears on the note  
as

& BONHOMME (1886), M. R.  
3 S. C. 1.—CAN.

—A promissory note was made for  
good & valuable consideration by deft.  
co. & indorsed by deft. directors ; it  
was subsequently indorsed by the  
payee :—*Held* : defts. were liable.  
*KNEORTEL FURNITURE CO. v.*  
*HOUSE FURNISHERS* 11 W. L. R.  
344.—CAN.

ment.]—Deft. being to plff.  
him his wife's promissory note  
to W. Brothers, or order, and  
by deft. The note, being  
unpaid at maturity, plff., who was  
the only member of the firm of  
W. Brothers, indorsed the name of  
W. Brothers above deft.'s name on  
the note, & then brought this action  
on a note in favour of W.  
who note to  
who indorsed it to Deft.,  
deny-

ing the indorsement by him to plff.,  
but did not allege that plff. was identi-

Ex. D. 96. *Reid.* Montague v. Perkins (1853), 17 Jur.  
557 ; *Taylor v. Great Indian Peninsular Ry. Co.* (1859),  
28 L. J. Ch. 285. *Mentd.* *Re North British Australasian*  
*Co., Ex p. Swan* (1859), 7 C. B. N. S. 400 ; *Swan v. North*  
*British Australasian Co.* (1862), 7 H. & N. 603 ; *Nash v.*  
*De Freville*, [1900] 2 Q. B. 72.

1335. After action brought—In court.]—*LUCAS*  
*v. MARSH*, No. 1340,

1336. Effect of indorsement after notice of  
fraud.]—*WHISTLER v. FORSTER*, No. 1152, *ante*.

#### F. Order of

1882 Act, s. 32 (5) ; Part XIII., Sect. 4,  
*post*.

#### 4.—CONDITIONAL, BLANK, SPECIAL, AND

1882 Act, ss. 16, 32 (6), 33, 34, 35.

Effect of agreements & conditions affecting  
delivery & negotiation.]—*See* Part VIII., Sect. 1,

1337. Conditional indorsement—Effect of con-  
dition—Old law.]—If the payee of a bill annexes a  
condition to his indorsement before acceptance, the  
drawee, who afterwards accepts it, is bound by  
that condition, & if the condition is not performed,  
the property in the bill reverts to the payee, & he  
may recover the contents against the acceptor.  
—*ROBERTSON v. KENSINGTON* (1811), 4 Taunt.  
30 ; 128 E. R. 238.

—*Consd.* Bank of Bengal v. Macleod (1849), 5  
Ind. App. 1.

*note*, 1882 Act, s. 33.

1338. Blank indorsement—Effect of.]—A blank  
indorsement upon a bill of exchange does not neces-  
sarily divest the property out of the indorser.—

cal with W. Brothers :—*Held* : although  
the identity appeared on the evidence,  
as it was not pleaded, plff.'s title to  
the note was complete, & he was en-  
titled to recover ; also, that, if the  
identity had been plff. could

special  
that would have destroyed the pro-  
fect effect of the first indorsement  
him.—*WATSON v. HARVEY* (1896), 10  
Man. L. R. 641.—CAN.

a. — After action brought.]

A. being indebted to plff.

them a note with an indorser. Plffs.

accept one, & A. made a note

to plffs., procured deft. to

it in blank, & delivered it to

plffs. Plffs. discounted the note,

having indorsed it under deft.'s in-

dorsement. The note having been

took it up, struck

& again indorsed

it above deft.'s name, adding to their

name "without recourse," & then

not indorsed the note when deft. in

it, & though their indorsement.

was stand as first indorsers on

the note, was not written on it until

after action brought, yet such

ment was sufficient.—*PROCK v.*

9 U. C. R. 73. *Not foll.*

*v. Snow* (1875), 9 N. S. R.

Bank

. 31 C

PART XI. 15, SUB-SECT. 4.

Effect of



. 4.]

-Re

Rose,

v. HAYNES (1703), 2 Ld. Raym. 871; 1 Salk. 130; 82 E. R. 83.

**1339. — Right to convert into special indorsement.**—If A. indorses a bill blank to B., he thereby puts it in the power of B. to overwrite what B. pleases.—*LAMBERT v. OAKES* (1699), 1 Raym. 443; Holt, K. B. 117; 12 Mod. Rep. 244; 1 Salk. 127; 91 E. R. 1194, N. P.

*Mentd.* *Bromley v. Frazier* (1721), 11 Mod. Rep. 348; *Heylyn v. Adamson* (1758), 2 Burr.

**1340. — In court.**—Action by indorsee of a promissory note, indorsed by the drawer, but not superscribed. The question being, whether or no, after the objection taken, the indorsement to plff. could be supplied in ct.:—*Held*: the words, pay the contents, etc., might be put or set over the name indorsed in ct., & where the indorsement red to be superscribed, the ct. never inquired the superscription was written.—*LUCAS v.* (1744), Barnes, 453; 91 E. R. 1000.

*Mentd.* *Reynolds v. Hoerling* (1784), 4 K. B. 181; *Dickson v. Evans* (1794), 8 Term Rep.

**1341. — By acceptor.**—Where A. drew a bill on B. payable to his own order, to enable him, by accepting it & passing it away, to raise money, & sent it to him with his name indorsed in blank: *Qu.*: whether he could restrain its general negotiability, by inserting the words, "pay to C. or order," over the name of A. written on the back.—*BLAND v. RYAN* (1795), Add. Cas. 39.

**By transferee.**—Where A., the payee of a bill of exchange, indorsed it in blank, & delivered it to B., & B. wrote above A.'s indorsement, "pay the contents to C.," but did not sign the bill:—*Held*: B. was not liable to C., as an indorser of the bill.—*VINCENT v. HORLOCK* (1808), 1 Camp. 442, N. P.

**1343. —**—A., the payee of a bill of exchange, indorsed it in blank & delivered it to B. B. wrote above the blank indorsement, "pay C. or order," & took up the bill after a of bkpcy. had issued against the A. petition that he might be at liberty to it under the commission was

of a promissory note  
indorsed in blank, & his widow  
administering sold &

of

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upon the bill in his own name, without  
any indorsement to him by the trustee.  
—*McMANON v. SMITH* (1871), 19 W. R. 347.—IR.

**1339 III.** —Plff. drew a promissory note in his own favour, which he indorsed & delivered to C. to whom he was indebted. C. assigned all his property to trustees for the benefit of his creditors, & the trustees transferred the note to deft., a creditor of C. Deft. having sued plff. on the

note:—*Held*: though the trust deed the trustees no power to assign a right to pay the with assets of the estate in kind, if they were willing to —*GILBERT v. C.* Dig. 658.—CAN.

L.

note indorsed it in blank. The B. Bank

the  
by S. Bank  
or order," thus converting it into a special indorsement to that bank. Plffs. took over the account, receiving the note & other securities. The note was again stamped "Pay to the order of the T. Bank," over the words already there, "Pay S. Bank or order," so as to partly obliterate them, but not so that both indorsements could not be plainly made out:—*Held*: plffs. became the holders of the note & entitled to maintain the action.—*GOVERNMENT BANK OF CANADA v. JORDON* (1905), 4 O. W. R. 153; 9 O. L. R. 146.—CAN.

1344.

*Semble*: the holder of a note payable to the order of the maker & indorsed in blank might fill up the blank indorsement by writing over it his own name, & so make it payable to himself.—*HOOPER v. WILLIAMS* (1848), 2 Exch. 13; 17 L. J. Ex. 315; 9 L. T. O. S. 80; 12 Jur. 270; 154 E. R. 385.

*Reid.* *Brown v. De Winton* (1848), 6 C. B. *Mentd.* *Masters v. Barrets* (1849), 2 Car. & Kir. 715.

**1345. — Qualified by subsequent special indorsement.**—When the payee of a bill of exchange has made an indorsement in blank thereon, no subsequent indorsee can restrain its negotiability by a special indorsement.—*SMITH v. CLARKE* (1794), Peake, 295; 1 Esp. 179, N. P.

*Foll.* *Walker v. MacDonald* (1848), 2 Exch.

**1346. —**—A bill of exchange, having been indorsed in blank, was afterwards indorsed by deft. specifically to "B. & W. & Co." Plffs., who carried on business under the respective firms of "B. & W. & Co.," & "the E. Co.," indorsed the bill by the name of "the E. Co." The bill was duly presented, but payment refused for want of an indorsement by "B. & W. & Co.":—*Held*: the bill having been indorsed in blank, its negotiability could not afterwards be restrained by a special indorsement, & the presentment was such as to render deft. liable on his indorsement to plffe.—*WALKER v. MACDONALD* (1848), 2 Exch. 527; 17 L. J. Ex. 377; 11 L. T. O. S. 270; 154 E. R. 600.

**1347. — Followed by blot.**—Whether special indorsement.—The existence of a blot after the first indorsement on a promissory note payable to bearer does not render it obligatory on plff. to prove that there was no special indorsement.—*MASTERS v. BARRETS* (1849), 2 Car. & Kir. 715, N. P.; *subsequent proceedings*, 8 C. B. 433.

**1348. Special indorsement—Distinguished from blank indorsement.**—D. drew a bill of exchange at Bristol on P. in London, payable to C. or order, at 28 days' sight. C. who lived at Bristol sent the bill with K. to London, with his name indorsed thereon, but a blank space over his name. K.

1345 I.

B. on a bill  
"Pay to C. or order," & below the indorsement were the signatures, first of B., the drawer, & then of A. The words "Pay to C. or order" were A. proved that the bill was lost, first by B. & then by K. & was discounted by C. & by A., & that the words "Pay to C. or order" were written by mistake above the signatures of B. & A.:—*Held* A. entitled to recover.—*MACKENZIE v. SCOT*, (Ct. of Sess.) 1310; 33 Sc. Jur.

a. Special indorsement — For special purpose.—Effect on right of indorser to set up *Ren.*—D. indorsed three bills, drawn in his favour by J., to A., as agent for a bank at L., for the purpose of getting them accepted by the drawee in G. At that time L. & J. were indebted to the bank in a

After two of  
A.,

that

presents it to P., who accepted it, & for non-payment C. brought *assumpsit*. It was alleged that the action should have been brought by K., because, by C.'s indorsing his name, the property was transferred from him to K.:—*Held*: there being a blank space left over the name of C., as was usual in bills of exchange, it was at the election of K. either to make use of it as his servant or order, & if he had filled up the blank space with making it payable to him, as he might have done, then the property of the bill had been transferred to him, & he only could have maintained the action against the acceptor, but as he had not filled up the blank space, he thereby declared his intention to have acted only as a servant of C.'s, whose name was put there, that, on payment thereof, a receipt might be written for the money over his name, & the action was maintainable by C.—*CLERK v. PIGOT* (1698), 12 Mod. Rep. 192; 88 E. R. 1250; *sub nom.* *CLARK v. PIGOT*, 1 Salk. 126.

*Annotations*:—*Reid*, *Bellamy v. Marjoribanks* (1852), 7 Exch. 389; *Hirschfeld v. Smith* (1866), L. R. 1 C. P. 340.

1349. ———. ]—*WATERS v. PAYNTER* (1826), *Chitty on Bills of Exchange*, 11th ed., p. 407.

1350. ——— Indorsement to A.—Equivalent to indorsement to "A. or order."—Pltf. declared on an indorsement made by W. A. whereby he appointed the payment to be to "L. A. or order," & upon producing the bill in evidence it appeared to be payable to "A. or order," but the indorsement was only in the following words: "Pay the contents to L. A.," & it was objected that the indorsement not being "to order" did not agree with the declaration:—*Held*: it was well enough, that being the legal import of the indorsement, & pltf. might have indorsed it over to another, which would be the proper order of the first indorser.—*ACHESON v. FOUNTAIN* (1723), 1 Stra. 557; 93 E. R. 698.

*Annotations*:—*Fold*, *Edie v. East India Co.* (1761), 1 Wm. Bl. 295. *Reid*, *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337.

1351. ——— Indorsable by A.]—A bill payable to A. "or order," & indorsed personally to B., may be afterwards indorsed by B. to another.—*EDIE v. EAST INDIA CO.* (1761), 1 Wm. Bl. 295; 2 Burr. 1216; 96 E. R. 166.

—*Consol.* *Cunliffe v. Whitehead* (1837), 3

of them in security of his debt, & at least, of that due by D.:—*Held*: the plea of retention could not

(1) 7 (Cl. of SCOT.

bank — *Whether*  
*may on dishonour*  
Pltf., having sued deft. upon a dishonoured bill of exchange, set forth the indorsements made upon it. One of the indorsements was made by pltf., & it specially directed payment of the bill to the Bank of New Zealand or order. There being no reindorsement by the bank to pltf.:—*Held*: pltf. not sue upon the bill without such reindorsement.—*LANGE v. HANON*, Mac. 316.—N.Z.

E. ———. ]—A note had been specially indorsed to a bank by pltf. the payee; his indorsement had not been cancelled, & the note had not been indorsed back to him by the bank. Pltf. having withdrawn or taken it reindorsement  
o give pltf. the

*Transferable only by indorsement.*]—A bill of exchange drawn by A. Co. on D. & Co. was indorsed "Pay to the order of the N. Bank, A.," & by the agent of the bank at A. "Pay to the order of the N. Bank, B., for collection." The bill was accepted by D. & Co., but was not paid, & was returned to A. While the bill was still in the hands of the agency of the bank there it was purchased by deft. & was handed over to him, but without

than those already on the bill. Deft. sued by pltf. as assignee of who had become insolvent, for a of account due that firm, bill by way of

the estate of D. & Co.: the bill having to the bank could not be transferred to deft. except by indorsement.—*FOURTH v. LAURENCE* (1848), 7 R. & Q. 148; 7 C. L. T. 174.—CAN.

—*Right to strike out.*]  
—*See Sub-sect. 5, post.*

1. ——— Conversion into blank in-

*Blind*, N. C. 828. *Auld*, *Brown v. De Winton*, Gay Lander (1848), 6 C. B. 336. *Consol.* *Crouch v. Foncier of England* (1873), L. R. 8 Q. B. 374. *Stourney v. Lord* (1828), Dan. & Ll. 132; *Good*. *Roberts* (1875), L. R. 10 Exch. 337. *Mentl.* *Maxwell v. Deane* (1854), 23 L. T. O. S. 1; *Bechuanaland Exploration Co. v. London Trading Bank*, (1898) 2 Q. B. 658; *Biddell Horst Co.*, (1911) 1 K. B. 934.

1352. ——— To official—Indorsement by official after cesser of office.]—A declaration in *assumpsit* stated that E. drew a bill of exchange on defts., payable to order of O., that defts. accepted, that O. indorsed to "the Treasurer General of the Royal Treasury of Portugal," & that C., then being the Treasurer General, indorsed to pltf. Plea, that the Treasurer General, by whom the indorsements were alleged to have been made, at the time when he indorsed was not such Treasurer General as was designated & intended by the indorsement of O., but minister of a hostile Govt., & had no title or authority to indorse. Replication, that the Treasurer General who indorsed was the Treasurer General designated, etc., not adding at the time, etc. The bills were indorsed for the use of M., then King of Portugal, & received by C., being then, & at the time of the first indorsement, his Treasurer, but, after M.'s Govt. had been subverted by a hostile one, & C. removed from office, C. indorsed:—*Held*: C., by the indorsement & delivery to himself, acquired an absolute title to the bills, & a power to indorse, which could not be qualified by any intention of O. not in the indorsement, even if such qd could be annexed to an indorsement at all. it could not, & it was immaterial whether C. was Treasurer General at the time of his indorsing over or not.—*SOARES v. GLYN* (1845), 8 Q. B. 24; 14 L. J. Q. B. 313; 5 L. T. O. S. 311; 9 Jur. 881; 115 E. R. 782, Ex. Ch.

—*Reid*, *Yates v. Nash* (1860), 8 W. R. 764.

1353. Restrictive indorsement—"Pay P. or order for use of C."—Effect of—Right of indorsee to sue.]—C. drew a bill of exchange upon R. payable to P. or order for the use of C. P. indorsed the bill to pltf. for value received. R., who had accepted the bill, having refused payment, pltf. as indorsee sued deft. as drawer of the bill:—*Held*: pltf. could sue, because C. had only an equitable interest, & not an interest at law to have the money, & C. could not maintain an action on the

put upon conversion of a on a promissory note into an indorsement in blank by striking out the words "Pay to the order of the H. Bank," above the signatures by the firm & the individual partners on the back, was a circumstance sufficient to put deft. bank on its inquiry as to the right of one of the partners to discount it for himself.—*PICK* *NORTHERN BANK* (1909), 18 Man. 675.—CAN.

—An indorsement to "the trustees & assignees of the estate of A." without naming them:—*Held*: if there is

by the be styled uncertain.—*DOUGALL* (1823), 3 O. S. 199.—CAN.

indorsement tion to pay proceeds to ]—A

had written a direction to pay the proceeds to the maker:— direction did not operate as



bill against R.—**CRAMLINGTON v. EVANS**  
Holt, K. B. 108; 2 Vent. 807; 90 E. R. 958, Ex.  
Ch.; *affg.* S. C. *sub nom.* **EVANS v. CRAMLINGTON**

1801. — **Co. Burr.**  
L. Thom. v. Bishop (1733), Kel. W.

**1354.** — “The within must be credited to D. value in account.”—A bill of exchange was drawn by A. on B. payable to C. or order, & indorsed by C. in the following words: “The within must be credited to D. value in account.” D. was indebted to B., & the bill was sent to B. & accepted by him, & he gave D. notice that he had received it & placed it to D.’s account:—*Held*: this was such a special indorsement as restrained the negotiability of the bill.—**ANCHER v. BANK OF ENGLAND** (1781), 2 Doug. K. B. 637; 99 E. R. 404.

*Annotations*: **Dodd**, Potts v. Reed (1800), 6 Esp. 57.  
**Apld.** **Stourney v. Lloyd** (1828), 8 B. & C. 622.

**1355.** — “Pay contents of bill to A.”—An indorsement of a bill of exchange, in the following words: “Pay the contents of the bill to A., being part of the consideration in a deed of assignment, executed by A., to the indorser & others,” is not a limited indorsement.—**POTTS v. REED** (1800),

**1356.** — “Pay to B. or his order for my”—A bill of exchange, drawn in America on a house in London, payable to order, was indorsed by the generally to A., & by him in the following: “Pay to B. or his order for my use”;—the indorsement was restrictive.—**LLOYD v. STOURNEY** (1829), 5 Bing. 525; 3 Moo. & P. 229; 3 Y. & J. 220; 130 E. R. 1164; *sub nom.* **LOYD v. STOURNEY**; Dan. & Id. 213, Ex. Ch.

& El.

**1357.** — “Pay to order of B. under provision for my note in favour of C. payable at house of B.”—A. remitted to B. a bank bill, indorsed in the following words: “Pay to the order of B., under provision for my note in favour of C., payable at the house of B. on Jan. 1, 1830.” B.

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t, as it is but a transfer of  
note, without the usual guarant  
nor can be held at all unless fraud,  
or misrepresentation is  
or the note is given in payment  
of a prior indebtedness.—**DUMONT v.**  
(1867), 17 L. T. 71.—

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C. W. N. 313.—IND.

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L. R. 372.—CAN.

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**CLINTON NATIONAL**  
1910, 33 W.

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offered them a note with an indorser.  
Pitts. agreed to accept one & A. made  
a note payable to pitts., procured debt.  
to indorse it in blank, & delivered it  
to pitts. Pitts. discounted the note

of the bill, & refused to pay them over to  
C. In an action for money had & received by  
C.:—*Held*: B. was not liable to C., because B.  
had never assented to hold the bill or money to the  
use of C.—**WEDLAKE v. HURLEY** (1830), 1 Cr. & J.  
83; L. & Welsb. 330; 148 E. R. 1344.

**Apld.** **Baron v. Husband** (1833), 4 B. & Ad.  
611.

**1358.** — “Value in account with the O. bank.”—A bill of exchange was drawn by M., under the name of M. & Co., upon & accepted by J. & Co., payable 6 months after sight to order of M., & by M. was indorsed to B., & by B. indorsed to C., “value in account with the O. bank,” & by C. indorsed to S. Action by S., as indorsee, against M., as drawer, upon the bill being dishonoured. Demurrer that the indorsement preceding that to S. was restrictive:—*Held*: there was nothing upon the indorsement by B. to preclude C., the restricted indorsee, from making an assignment of the bill, so as to give the subsequent indorsee a right of action for the benefit of the restraining indorser, or trust, as the case might be.—**MURROW v.** (1853), 8 Moo. P. C. C. 267; 14 E. R. 102, P. C.

**1359.** — “Pay J. or order value in account with H.”—Meaning of “value in account.”—A bill of exchange was drawn by debt., & indorsed by him as follows: “Pay J. or order value in account with H.” In an action by plff., a subsequent indorsee, against debt. as such indorser:—*Held*: (1) the indorsement was not a restrictive indorsement; (2) “value in account” meant the same in an indorsement as on the face of a bill, viz. “value received in account,” but in no sense were they restrictive of the indorsement.—**BUCKLEY v. JACKSON** (1868), L. R. 3 Exch. 135; 18 L. T. 886.

**1360.** — “For collection.”—Right to sue.—A person to whom a bill is restrictively indorsed for collection, who has paid the amount of such bill to the indorser, cannot, by reason of such payment, acquire rights on the bill against the acceptor, where the amount of the bill has been paid to the indorser before maturity.—**WILLIAMS, DEACON & CO. v. SHADBOLT** (1885), 1 Cab. & El. 1 T. L. R. 417.

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**16.—Right of transferee to indorsement of Part XII. Sect. 1.]**

name of a responsible drawer attached. C. brought to plff. a bill drawn by deft. to his own order & accepted by C., & plff. made the advance. The bill was not indorsed by deft., but that was not noticed at the time of the advance. Deft., who had received no consideration for the bill, gave it to C. for the purpose of his raising money upon it. Deft. having refused to indorse the bill:—*Held*: the effect of the transaction was that deft. transferred the bill, by means of C., to plff., & plff. as the transferee was entitled to have the indorsement of deft., & to recover against him on the bill.—*WALTERS v. NEARY* (1904), 21 T. L. R. 146, C. A. Of trustee in bankruptcy.]—See Nov. 1304 *et*

**17.—PROOF OF**

**1367. Necessity for—Defendant aware of indorsement.]**—Although a bill of exchange has been shown to the drawer, with the name of the payee indorsed upon it, & he merely objects to paying it, on the ground that he had drawn it without consideration, in an action against him by the indorsee this does not dispense with regular proof of the indorsement. *DUNCAN v. SCOTT* (1807), 1 Camp. 100, N. P.

**1368. — When stated in declaration.]**—In an action against the maker of a promissory note, payable to A. or bearer, if the declaration states that A. indorsed it to plff., this indorsement must be proved.—*WAYNAM v. BEND* (1808), 1 Camp. 175, N. P.

*Annotations:—Distr.* Kerr v. James (1835), 1 Gale, 21. *Reid.* Keene v. Heard (1860), 8 C. B. N. S. 372.

**1369. Prior indorsement.]**—In an action against the indorser of a bill of exchange, it is not necessary to prove any indorsements on the bill prior to it.—*CRITCHLOW v. PARRY* (1809), 2 N. P.

**1370. Intermediate indorsement—Offer by indorser to substitute bill.]**—A letter written by the

indorser of a bill to a subsequent holder, & offering to give a substituted bill in the place of that which he had indorsed, supersedes the necessity of proving the intermediate indorsement stated in the declaration.—*SIDFORD v. CHAMBERS* (1816), 1 Stark. 326, N. P.

**1371. Indorsed by mark.]**—A bill of exchange drawn & indorsed by mark may be proved from inspection by a person who has seen the party so execute instruments.—*GEORGE v. SURREY* (1830), Mood. & M. 510, N. P.

**1372. Admissibility of evidence—Other notes.]**—On the trial of an action on a promissory note, in which the question is, whether deft. has indorsed it or not, plff.'s counsel will not be allowed to give in evidence a number of other notes, bearing deft.'s undoubted signature, with a view of having the jury compare the handwriting of those signatures with the indorsement on the note in question, & the jury will not be allowed to compare anything with the indorsement, except documents otherwise evidence in the case.—*BROMAGE v. RICE* (1836), 7 C. & P. 548, N. P.

*Annotation:—Mentd.* Doe d. Mudd v. Suckermore (1836), 5 Ad. & El. 703.

**1373. — In reply.]**—Where plff., who sued as indorsee of a bill of exchange, relied, in the first instance, upon a *prima facie* case by evidence of the indorser's handwriting, evidence was given for the defence, on a plea traversing the indorsement, to show that plff. was too poor to have given value for the bill, & had disclaimed all knowledge of it:—*Held*: plff. could not give evidence in reply that he was able to give value, & had actually discounted the bill, because such evidence was not in contradiction, but merely confirmatory of his *prima facie* case.—*JACOBS v. TARTLETON* (1848), 11 Q. B. 421; 17 L. J. Q. B. 194; 10 L. T. O. S. 12 Jur. 517; 116 E. R. 534.

*Annotations:—Reid.* Wright v. Wilcox (1850), 9 C. B. *Mentd.* Doe d. Nicoll v. Bower (1851), 16 Q. B. Shaw v. Beck (1853), 20 L. T. O. S. 211.

**1374. Evidence of writing—Bill delivered by indorser.]**—If the payee of a bill of exchange

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**1366 (L. — What indorsement.]**—In an action on an agreement by which, in consideration of plff. giving deft. his note for \$438, payable 4 months after date, as the purchase-money for a note for \$730, made by T., having then 10 months to run, payable to deft.'s order, deft. agreed to keep plff.'s note renewed until the maturing of T.'s note: & at the maturity of T.'s note, "to procure T. to renew their note, by giving their seven notes for equal amounts payable to my order, & payable in 1, 2, & 3 months," etc. The note for \$730, also payable to deft.'s order, was indorsed by deft. "without recourse," & it appeared that plff. designedly left the agreement doubtful, so as to insist upon an unconditional indorsement as to the others:—*Held*: (1) the words "payable to my order," did not necessarily import an unconditional indorsement by deft. of the seven notes, but might mean only such an indorsement as would pass the

in them to plff., (2)  
claim only that the re-  
should be indorsed as the  
was.—*McCARNEY v. VINE*  
C. P. 438.—CAN.

of  
by P. payable to the order of G.,  
indented to plff., delivered it to  
as collateral security, but did not  
it. In an action, in the county  
at G. & P. to recover the  
of the note:—*Held*: there  
no evidence that G. intended to  
indorse the note to plff., & the county  
ct., not having the power possessed by  
the C. of King's Bench under Rules  
to order to indorse it.  
against P. failed.—*LEWIS*

W. W. R. 1134.—CAN.

**PART XI. SECT. 17.**

**1367 L. Necessity for.]**—In an action  
of a bill of  
of  
for plff., & deft. after-  
in arrest of judgment, on  
that plff. had used as  
& not as indorser, & the bill  
by

payable to the order of the drawer:—*Held*: it could not be assumed by necessary intendment that the indorsement was proved at the trial, nor was the defect cured by verdict.—*MULHALL v. CHAWFORD* (1852), 4 Ir. Jur. 289.—IR.

**1367 II. — Pleading.]**—A bill of exchange drawn by A. Co. on the firm of D. & Co. was indorsed "Pay to the order of the N. Bank, A." & by the agent of the bank at A. "Pay to order of the N. Bank, H., for  
The bill was accepted by  
& Co., but was not paid, & was retu-  
to A. While the bill was still in  
hands of the agency of the bank there  
it was purchased by deft. & was handed  
over to him, but without any indorse-  
ment being made other than those  
already on the bill. Deft. being sued  
by plff. as assignee of D. & Co., who  
had become insolvent for a balance of  
account due that firm, pleaded the bill  
by way of set-off & tendered an amount  
as the balance due the estate of D. &  
Co. As to the plea of set-off plff.  
ally:  
by merely joining issue plff.  
could not put deft. to proof of the  
CAN.



delivers it, with his name indorsed on it, to another, no proof is required of the handwriting of the indorsement.—*GLOVER v. THOMSON* (1826), Ry. & M. 403, N. P.

*Annotation*:—*Reid*. *Ramuz v. Crowe* (1847), 1 Exch. 167.

1375. — *Other notes.*—*BROMAGE v. RICE*, No. 1372, *ante*.

1376. — *By same person as drawer.*—In an action against the acceptor of a bill of exchange, purporting to be drawn & indorsed by A., proof that the bill was indorsed by the same person who drew it is sufficient, though that person is shown not to be A.—*SMITH v. MONEYPENNY* (1840), 2 Mood. & R. 317, N. P.

1377. — *& delivery to person to hold for plaintiff.*—On a traverse of the indorsement of a bill of exchange, a witness stated that he took the

bill to debt., who accepted & indorsed it in the presence of the witness, & then delivered it to him to hold for plff.:—*Held*: that was evidence to go to the jury of an indorsement to plff.—*BLEWITT v. MIDDLETON* (1843), 1 L. T. O. S. 258; *sub nom.* *BLEWETT v. MIDDLETON*, 7 Jur. 501.

1378. — *In an action by indorsee upon a promissory note against the maker, the payees being a firm of two persons, plff. swore he had carried on correspondence with the firm, & had answered letters, which were signed in the same handwriting as the indorsement; he knew the writing of one of the firm, but the indorsement was not his writing:—Held*: sufficient evidence of the indorsement to be submitted to a jury, but leave should be reserved to debt., if necessary, to move to enter a non-suit.—*BREWERTON v. I* (1867), 17 L. T. 325, N. P.

## Part XII.—General Duties of Holder.

### SECT. 1.—PRESENTMENT FOR ACCEPTANCE.

1882 Act, ss. 39–43, 89 (3) (a).

1379. *What instruments—Banker's deposit note—Meaning of "acceptance" in.*—A customer deposited a sum of money with a banker, & received a note, by which the banker promised to pay the principal at 10 days' sight with 3 per cent. interest to the day of acceptance:—*Held*: the word "acceptance" meant sight & it need not be left with the maker for acceptance.—*STURTON v. TOOMER* (1827), 7 B. & C. 410; 1 Man. & Ry. K. B. 125; 6 L. J. O. S. K. B. 49; 108 E. R. 778.

*Annotations*:—*Reid*. *Serle v. Norton* (1842), 9 M. & W. 309; *Ashling v. Doon*, [1891] 1 Ch. 568.

1380. *Necessity for.*—A declaration on a bill of exchange against the drawer must state that it was tendered to the acceptor, & that he refused to accept it.—*MERCER v. SOUTHWELL* (1682), 2 Show. 180; 89 E. R. 876.

1381. — *Bill payable after date.*—It is not necessary in an action against the drawer of a bill of exchange, payable after date, to aver acceptance or notice of refusal to accept, but proof of presentment for payment is sufficient.—*PHILPOTT v. BRYANT* (1827), 3 C. & P. 244, N. P.; *proceedings* (1828), 4 Bing. 717.

*Oriental Financial Corp'n. v. Gurney* (1871), 7 Ch. App. 145, n.

1382. *Within what time—Bill payable after—Reasonable time question for jury.*—The pur- of a foreign bill of exchange payable at a

certain time after sight, which is publicly offered for negotiation, is not bound to send it by the earliest opportunity to the place of its destination. There is no fixed time when a bill drawn payable at sight or a certain time after, shall be presented to the drawee. But it must be presented within a reasonable time. What is a reasonable time, is a question for the jury to decide, from the circumstances of the case. *Seem*: If the holder of a bill so payable, neither presents it nor puts it in circulation, he is guilty of laches, & cannot recover upon it.—*MULLMAN v. D'EQUINO* (1795), 2 Hy. Bl. 565; 126 E. R. 705.

*Rawdon*  
*L. Ramchurn Mullick v. Luch*  
9 Moo. P. C. C. 46. *Reid*. *Fry v. Hill* (1817), 7 Taunt. 397; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526. *Monid*. *Buller v. Harrison* (1777), 2 Cowp. 565; *Darbhahre v. Barker* (1805), 6 East, 3; *Newall v. Tomlinson* (1871), L. R. 6 C. P. 405.

—The holder of an inland bill, payable after sight, is not bound instantly to transmit the bill for acceptance. He may put it into circulation, or, though he do not circulate it, he may take a reasonable time to present it for acceptance. What is a reasonable time is always a question to be determined by a jury.

A delay to present until the 4th day a bill on London, given within twenty miles thereof, is not unreasonable.—*Fry v. Hill* (1817), 7 Taunt. 397; 129 E. R. 158.

*Annotations*:—*Consol*. *Ramchurn Mullick v. Luch*  
*Radaklmon* (1854), 9 Moo. P. C. C. 46. *Reid*.  
*Rawdon* (1832), 9 Bing. 416.

### PART XII. SECT. 1.

1380 L. *Necessity for.*—Deft. to plff., to whom he owed \$117.12, a draft or order on R. for \$100 on account, forwarded the draft to R. by further

upon by R. to either plff. or R. from the After in

of the original balance:—*Held*: it was the duty of plff. to have presented the draft within a reasonable time, or to have returned it to debt.—*HART v.*

CAN.

1381 L. *Bill on a*  
-In an payable after [for want of presentment  
MERCHANTS BANK OF  
1, 31 N.

1382 L.

of drawer.)—  
for acceptance within

a right of action on a bill or hundi ble after sight. the drawer had not assets in the drawee at or to the date of the hundi:—*Held* a of presentation.

ANANTAPA V.  
1. L. R. 10 Bom. 346.

v.

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**1384. — Conduct of plaintiff & custom of trade.**—If a bill drawn by a banker in the country, on a banker in town, in favour of A. payable after sight, be indorsed by A. to deft., who indorses to plffs., 7 days after the date of the bill, & plffs. delay presenting it for acceptance for 4 days, it will be left to the jury to say whether plffs. have been guilty of unreasonable delay, & in considering this, the jury may infer, from deft. himself having kept the bill so long unaccepted, that it is not the course of business to present such bills for acceptance immediately after the party receives them.

A party need not present for acceptance on the very day on which he receives the bill.—*SHUTE v. ROMING* (1828), 3 C. & P. 80; *Mood. & M.* 133, N. P.

**1385. — Situation & interest of drawer & holder.**—Plff. purchased in the market a bill drawn by deft. on G. at Rio Janeiro, & payable at 60 days' sight. The exchange falling after the purchase, plff. kept the bill nearly 5 months, & then sold it again. The drawee having failed before presentment, plff., after paying his indorsee the amount of the bill, sued deft., the drawer:—*Held*: (1) the jury were correctly directed to consider, whether, looking at the situation & interests of both drawer & holder, there had been unreasonable delay on the part of plff. in forwarding the bill for acceptance or putting it in circulation; (2) the jury having found for plff., the ct. would refuse to disturb the verdict.—*MELISH v. RAWDON* (1832), 9 Bing. 416; 2 Moo. & S. 570; 2 L. J. C. P. 131 E. R.

*Apprd. Ramchurn Mullick v.*

(1854), 9 Moo. P. C. C. 46.

*Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P.

*Mentd. Montague v. Perkins* (1853), 22 L. J. C. P.

**1386. — Question of law & fact—Trade**  
What constitutes a reasonable time for of a bill for acceptance is a mixed of law & fact for the determination of the ct. & the jury.—*RAMCHURN MULLICK v. LUCHMEERCHUND RADAKISSEN* (1854), 9 Moo. P. C. C. 46; 14 E. R. 815, P. C.; *sub nom. RADAKISSEN & v. RAMCHURN MULLICK*, 2 C. L. R. 1004; *MULLICK v. RADAKISSEN*, 23 L. T. O. S.

of *Van Diemen's Land v. Bank of*  
L. 3 P. *Mentd.*  
& N.

**1387. — Pleading & proof.**—Where a bill of exchange is payable a specified number of days after sight, the real day of presentment for ptance need not be alleged, & a presentment a day subsequent to that alleged may

proved.—*FORMAN v. JACOB* (1815), 1 Stark. N. P.

**1388. — After death of drawee—Executors unknown.**—A bill was drawn in Melbourne on G. in London at 10 days' sight. When the bill arrived in London, G. had been dead some weeks, but no administration had been taken out nor will proved. The manager of the bank, to whom the bill had been sold, not being aware that G. was dead, caused it to be presented at his office, when G.'s manager, F., informed the person presenting the bill of G.'s death, & refused to accept, stating that G. had left exors. A second presentment was made, & on a third occasion the bank manager came himself & was informed that one of the exors. was abroad, & he was apparently not told who the other was:—*Held*: whether the bill had been duly presented or not, a reasonable course had been taken for getting the bill accepted & paid.—*SMITH v. BANK OF NEW SOUTH WALES, THE STAFFORDSHIRE* (1872), L. R. 4 P. C. 194; 8 Moo. P. C. C. N. S. 443; 41 L. J. Adm. 49; 27 L. T. 46; *Asp. M. L. C.* 365; 17 E. R. 378, P. C.

*Annotations*:—*Mentd. The Onward* (1873), L. R. 4 A. & E. 38; *Louisiana Citizens' Bank v. Wendelin* (1866), 2 T. L. R. 240; *The Dictator*, [1892] P.

, now, 1862 Act, s. 41 (1) (c).

**1389. — Foreign bill—After negotiation.**—It is no laches to put a foreign bill, payable after sight, into circulation before acceptance, & to keep it circulating without acceptance so long as the convenience of the successive holders requires.—*GOUPY v. HARDEN* (1816), 7 Taunt. 159; *Holt*, N. P. 314, n.; 2 Marsh. 454; 129 E. R. 64.

*Fold. Fry v. Hill* (1817), 7 Taunt. 397, 10 Moo. P. C. C. 94.

**1390. — Drawn in Newfoundland—Presented in England.**—A bill of exchange was drawn in duplicate on Aug. 18 at C., in Newfoundland, payable 90 days after sight, on S. & Co. in England for the freight of a voyage from Liverpool to C. The bill was not presented for acceptance to S. & Co. until Nov. 16. C. was twenty miles from St. John's, with a daily communication between those places, & from St. John's there a post-office packet three times a week to I

average voyage being about 18 days:

jury had properly found that the bill was not for acceptance within a reasonable time, no circumstances being proved in explanation of the delay.—*STRAKER v. GRAHAM* (1839), 4 M. & W. 721; 7 Dowl. 228; 1 Horn. & H. 449; 8 L. J. 50; 150 E. R.

*Annotations*:—*Reid. Ramchurn Mullick v. Luchmeerschund Radakissen* (1854), 9 Moo. P. C. C. 46. *Mentd. Harding v. Hewitt* (1849), 4 Jur. 291; *Burges v. Langley* (1843), 1 Dow. & L. 21; *Raphael v. Bank of England* (1853), 17 C. B. 181.

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not have presented the bill for acceptance before Saturday & would then have had till Monday to obtain the acceptance or the refusal of the drawee to accept, & the circumstance of having presented the bill on Friday did not compel the bank to obtain an answer on Saturday.—*BANK OF VAN DIEMEN'S LAND v. BANK OF VICTORIA* (1869), 6 L. & A. B. 178.—*AUS.*

**1389 II.**—Deft., on Oct. 8, indorsed a bill drawn by S. on E. & Co. of Liverpool, England, thinking, but not stipulating, that it

was to be forwarded by the mail closed on the same day. The ever-held the bill on that day, & also on a following mail day, & on Nov. 3, sold the bill for full value to plff., who remitted it the same day. The bill was accepted, but the acceptors having failed before it matured, defts. were sued as indorsers. Defts. pleaded, among other things, that they were discharged of their liability, by the delay in putting the bill into circulation:—*Held*: there was no such delay as to constitute a defence in law.—*WYLLIE v. WATSON* (1869), 1 N. S. R. 504.—*CAN.*

## PART XII.—GENERAL DUTIES OF HOLDER.

**1391. — Drawn in Calcutta—Presented in Hong Kong.**—A bill of exchange was drawn at Calcutta on Feb. 16, 1848, by R. & Co. on D. & Co. at Hong Kong, payable 60 days after sight, & indorsed by R. & Co. to M., or order. M., in consequence of the depressed state of the money market at Calcutta, & the unsaleableness of bills on China at that time at Calcutta, kept the bill for 5 months & 9 days, & then sold it to N., who did not present it for acceptance at Hong Kong till Oct. 24 in that year, when D. & Co. refused to accept it:—*Held*: the presentation of the bill for acceptance was not made within a reasonable time, & R. & Co., the drawers, were discharged.—**RAMCHURN MULLICK v. LUCHMEECHUND RADAKISSEN** (1854), 9 Moo. P. C. C. 46; 14 E. R. 215, P. C.; *sub nom.* RADAKISSEN & DOSS v. RAMCHURN MULLICK, 2 C. L. R. 1664; *sub nom.* MULLICK v. RADAKISSEN, 23 L. T. O. S. 25.  
*Annotations*:—*Reid*. Bank of Van Diemen's Land v. Bank of Victoria (1871), L. R. 3 P. C. 526. *Mentl.* Goodwyn v. Cheveley (1859), 4 H. & N. 631.

**1392. — Drawn in Jersey—Presented in England.**—A bill of exchange drawn in Jersey, & payable by the drawers' correspondents in London 3 days after sight, or order, was not presented until 37 days after date:—*Held*: that being a foreign bill, it was presented within a reasonable time.—**GODFRAY v. COULMAN** (1859), 13 Moo. P. C. C. 11; 15 E. R. 5, P. C.

**1393. When excused—Drawer remaining solvent—No damage occasioned by delay.**—Circumstances (see No. 1391, *ante*) in which:—*Held*: the want of presentment was not excused by reason of the drawers continuing solvent from the date of the bill to the presentment, or that no actual damage was caused to them by the delay.—**RAMCHURN MULLICK v. LUCHMEECHUND RADAKISSEN** (1854), 9 Moo. P. C. C. 46; 14 E. R. 215, P. C.; *sub nom.* RADAKISSEN & DOSS v. RAMCHURN MULLICK, 2 C. L. R. 1664; *sub nom.* MULLICK v. RADAKISSEN, 23 L. T. O. S. 25.

—*Reid*. Bank of Van Diemen's Land v. Bank of Victoria (1871), L. R. 3 P. C. 526. *Mentl.* Goodwyn v. Cheveley (1859), 4 H. & N. 631.

**1394. Second presentment—Whether necessary—On request.**—Where the drawee of a bill of exchange, who had once refused to accept it, said to the holder: "If you will send it to the counting house again, I will give directions for its being accepted":—*Held*: he was not liable as acceptor, without evidence that the bill was again sent back to his counting house for acceptance.—**ANDERSON v. HICK** (1812), 3 Camp. 179, N. P.

goods by a bill which the drawee refuses to accept, & afterwards desires it may be again presented, & it will be honoured, the holder is not bound to present it, nor to return the bill.—**HICKLING v. HARDEY** (1817), 7 Taunt. 312; 1 Moore, C. P. 61; R. 125.

**1395. —**—The holder of a bill of change applied to the drawee on the day before the bill became due, who informed him that he had no effects of the drawer's in his hands, but that

they would probably be supplied before the next day. On the next day the drawer informed the holder that he would endeavour to provide effects & would call upon him again:—*Held*: that did not supersede the necessity of a presentment on that day.

The evidence shows that it was not likely that the drawees would accept but it was possible that they might change their minds (*LORD ELLENBOROUGH, C.J.*).—**PRIDEAUX v. COLLIER** (1817), 2 Stark. 57, N. P.

*Fold*. Hill v. Hoop (1823), Dow. & Ry. N. *Reid*. Pickin v. Graham (1833), 1 Cr. & M. 725.

**1397. Effect of presentment—No warranty that documents attached are genuine.**—Defts., who carried on business in Liverpool, purchased cotton from dealers in the United States, who drew a bill of exchange on defts.' bank in Liverpool for the price in the following form: "Sixty days after sight this first of exchange (second unpaid) pay to the order of ourselves £1,464 9s. 0d. value received, & charge same to account of 100/R.S.M.I. bales of cotton," & issued that bill in the United States. Pltfs., dealers in foreign bills of exchange in New York, in good faith purchased the bill of exchange with the bill of lading of the cotton attached, & sent the documents to defts.' bank in Liverpool, who by arrangement with defts. accepted the bill & paid it at maturity. The bill of lading was a forgery, & no cotton had been shipped under it. Defts., on discovery of the fraud, brought an action in America against pltfs. to recover back the amount of the bill so paid by them. Pltfs. then brought an action in England, claiming a declaration that they did not, by presenting the bill for acceptance with the bill of lading attached, warrant or represent that the bill of lading was genuine:—*Held*: pltfs. did not, by presenting the bill of exchange for acceptance, warrant or represent the bill of lading to be genuine.—**GUARANTY TRUST CO. OF NEW YORK v. HANNAY & Co.**, [1918] 2 K. B. 623; 87 L. J. K. B. 1223; 119 L. T. 321; 34 T. L. R. 427, C. A.

*Annotation*:—*Mentl.* *Re* Comptoir Commercial v. Power, [1920] 1 K. B.

, further, SALE OF GOODS.

**1398. Proof of presentment—Identification of drawee.**—To charge the drawer of an bill, some actual evidence of a demand to on the drawee must be proved. It is not to call at the residence of the drawee, & the acceptance to be refused by a person who was unknown to the person calling.—**CHEEK v. ROPER** 5 Esp. 175, N. P.

**Effect of delay in accepting—Extension of time granted by holder.**—*Qu.*: whether when a bill is left for acceptance & the drawee, after its remaining in his possession twenty-four hours, requires time to consider of it, & the holder grants him that time, the holder is not bound to give immediate notice to his indorser of the particular circumstance of such request & of the delay  
—**INGRAM v. FORSTER** (1805), 2 Smith,

bank of letter of credit.]—After notice of revocation of letters of credit has been the holder, he is not bound to acceptance in order to the bank.—**ANSELL v.**

or **NOTO** (1873), 5 W. T. O. S. 1 from

of presentment.]—To

his father was noted in  
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**1. — Presentment for acceptance. Sect. 2:**  
**1.]**

**1400. — Bill left by agent—Negligence of agent.]**—The object of the transmission of a bill of exchange from principal to agent being to obtain & payment of the bill, or, if not  
 1, to guard the rights of the principal against the drawer, the duty of the agent must be measured by these considerations, & the agent ought not to press unduly for acceptance or refusal within the time which will preserve the rights of the principal against the drawer.

In an action for negligence by a principal against an agent, it appeared that the principal transmitted to the agent a bill of exchange for acceptance. The bill was received on a Friday at 1 p.m., & was left with the drawee at 2 p.m. the same day. On Saturday, at 11.30 p.m., the agent called for the bill, & as business closed at 12 p.m. on Saturday, was directed by the drawee to call on Monday. The agent called on Monday, & was directed to call on Tuesday. When the agent called on Tuesday, the acceptance, which had been made on Saturday, had been cancelled. The jury having found a verdict for the principal, but with nominal damages:—*Held*: the damages should not be increased. — **BANK OF VAN DIEMEN'S v. BANK OF VICTORIA** (1871), L. R. 3 P. C. ; 7 Moo. P. C. C. N. S. 401; 40 L. J. P. C. 28; 19 W. R. 857; 17 E. R. 152, P. C.

**1401. Effect of non-acceptance—Right of action Against indorser.**—An action lies by indorsee against indorser upon a bill of exchange immediately on the non-acceptance of the drawee, the time for which the bill was drawn being passed.—**HALLINGALL v. GLOSTER** (1803), 3 East, 481; 102 E. R. 681.

*Mentd.* **Starey v. Barrow** (1808), 3 Smith, K. B. 411.

**1402. — Against drawer.]**—The holder of bill of , on non-acceptance, & protest notice , has an immediate right of action the drawer, & does not acquire a fresh of action on the non-payment of the bill

*c. Evidence of non-acceptance — Bill drawn on company.]*—Where a bill is drawn upon a co., & the person actually managing the affairs of the co. is called upon to accept & refuses to do so, his refusal is sufficient evidence of refusal to accept by the co. — **ASHMORT & CO. v. DENNISTON**, 6 N. Z. L. R. 432.—N.Z.

*d. Effect of delay in making presentment.]* *Qu.*: whether, where the creditor having received his debtor's draft on a third person, in whose hands the debtor had funds, neglected to present the draft for acceptance, the jury should not have been directed that the creditor was guilty of such laches as to make the debt his own, & preclude him from recovering against deft.—**DUNN v. FREDERICKSON** (1800), 1 P. & R. 515.—CAN.

*f. — On rights of holder.]*—In an action against the indorser of a bill of exchange, which had been retained by pltf. for 10 months after it came into his possession, a special jury found that it had been the custom of Newfoundland for parties to retain bills of exchange for an indefinite period, without prejudice to the holder's right to have recourse to the indorser & drawer in the event of non-acceptance by the drawee.—**MURRAY v. DUNN**

(1817), 1 Nfld. L. R. 1  
 Nfld. Cases, 6.—NFLD.

**PART XII. SECT. 2, SUB-SECT. 1.**

on  
 , having regard to the contained in them, lien notes, & not promissory notes:—*Held*: presentment was not necessary to hold deft.

W. L. R. 641; 6 W. W. R. 1178; 20 D. L. R. 725; 24 Man. L. R. 532.—CAN.

**1405 i. To charge acceptor or**

one

made deft. & L. :—*Held*: a plea, that demand, was bad. — **BURTON v. AINSWORTH** (1868), 1 N. R. W. S. C. R. 419.—AUS.

**1405 ii. —.]**—The maker of a negotiable note is not bound to pay it, unless the party demanding payment produces & offers to deliver it up.—**JORDAN v. COATES** (1850), 3 All. 107.—CAN.

**1405 iii. —.]**—The statement in a declaration, that a promissory note was duly presented & dishonoured, is a sufficient verdict of non-payment as

when due.—**WHITEHEAD v. WALKER** 9 M. & W. 506; 1 Dowl. N. S. 600; 11 L. J. 108; 152 E. R. 214; *subsequent proceedings*, 10 M. & W. 606.

—*Mentd.* **Hemp v. Garland** (1843), 4 Q. B. 519  
**Harrison** (1854), 10 Exch.

**After failure to give notice of dishonour.]**—*See* Sect. 4, sub-sects. 8, 9, *post*.

**1403. — On original consideration.]**—Where a bill of exchange was given in payment for goods sold, which upon presentment to the drawee was refused acceptance:—*Held*: the holder having declared against the drawer on the bill, & joined counts for goods sold, might treat such bill as a nullity, & recover his demand on the latter counts, although the credit on the bill had not expired.—**HICKLING v. HARDEY** (1817), 7 Taunt. 312; 1 Moore, C. P. 61; 129 E. R. 125.

**1404. Delivery to stranger after acceptance—Rights of owner of bill—Against person wrongfully delivering out bill.]**—It is the regular & usual course of business in commercial transactions to deliver out a bill of exchange, left for acceptance, to any person who mentions the amount, & describes any private mark or number upon it; & if the clerk of the party leaving it by his conduct enables a stranger to discover the mark or number, in consequence of which the bill is delivered out to him, the party leaving it cannot maintain trover for the bill against the person who so delivered it out. — **MORRISON v. BUCHANAN** (1833), 6 C. & P. 18, N. P.

*Mentd.* **Johnson v. Windle** (1838), 3 Scott, 608.  
 Part XXII., Sect. 10, *post*.

**SECT. 2.—PRESENTMENT FOR PAYMENT.**

**SUB-SECT. 1.—NECESSITY FOR PRESENTMENT.**

*See* 1882 Act, ss. 45, 52 (1), 86, 87.

**1405. To charge acceptor or maker—Payable on demand.]**—In debt on a bill upon demand, it is not

the **NIMMO v.**  
 U. C. L. J. O. S. 8.

CAN.

**1405 iv. —.]**—Where in an action maker & indorser, under 5 Will. 4, c. 1, & 3 Vict. c. 8, pltf. declared in the form given by the later but did not aver presentment: : pltf. was entitled to judgment the maker, & the indorser to against him.—**SMALL v.** (183), 6 O. 476.—CAN.

**1405 v. —.]**—The maker of a note is not liable thereon unless the note is ited.—**JOHNSON v.** 37 W. L. R. 21.—C.

Terr. 1. 440; 5 W. L. R.

**1405 vii. —.]**—*Held*: Parliament intended to make presentation unnecessary against the maker, but if he were sued before presentation, & he had funds at the place of payment sufficient to satisfy the note, the ct. should award the costs against pltf.—**HAYDEN CLINTON NATIONAL BANK v. DIXON** (1916), 33 W. L. R. 838; 9 W. W. R. 1260.—CAN.

**1405 viii. —.]**—The presentation of a bill does acceptor's liability, except as to costs



## PART XII.—GENERAL DUTIES OF HOLDER.

necessary to state any actual demand.—*CAPP v. LANCASTER* (1597), Cro. Eliz. 548; 78 E. R. 794.

*Annotations*:—*Ridd*. *Thomson v. Butler* (1599), Cro. Eliz. 721; *Ashenden v. Clapham* (1673), Freem. K. B. 113. *Mentd.* *Re Brown's Estate, Brown v. Brown*, [1893] 2 Ch. 300.

**1406.** ———.]—In debt on a note, payable on demand, it is not necessary to allege a demand in the declaration.—*RUMBALL v. BALL* (1711), 10 Mod. Rep. 39; 88 E. R. 616.

*Annotations*:—*Mentd.* *Bishop v. Young* (1800), 2 Bos. & P. 78; *Priddy v. Henbrey* (1823), 1 B. & C. 674; *Re George, Francis v. Bruce* (1890), 44 Ch. D. 627; *Re Brown's Estate, Brown v. Brown*, [1893] 2 Ch. 300.

**1407.** ———.]—On a note payable with interest on demand, Stat. Limitations begins to run from the date of the note.—*NORTON v. ELLAM* (1837), 2 M. & W. 461; *Murp. & H.* 69; 6 L. J. Ex. 121; 1 Jur. 433; 150 E. R. 839.

*Annotations*:—*Consd.* *Jackson v. Ogg* (1859), John. 397; *Re George, Francis v. Bruce* (1890), 44 Ch. D. 627; *Re Brown's Estate, Brown v. Brown*, [1893] 2 Ch. 300. *Ridd.* *Re Bethell, Bethell v. Bethell* (1887), 34 Ch. D. 561; *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

**1408.** ——— One maker of joint & several note surety only.]—The rule, that, where a man agrees to pay on demand a debt, not his own, demand is necessary to create a right of action against him, does not apply to the case of a joint & several promissory note, in which one of the makers is known to join only as a surety for the other.—*Re MAYOR, Ex p. WHITWORTH* (1841), 2 Mont. D. & De G. 158, Ct. of R.

**1409.** ———.]—A promissory note payable on demand does not require any demand to be made for payment of it previous to the bringing on an action for the amount.—*BARRETT v. MEREDITH* (1855), 25 L. T. O. S. 166.

**1410.** ——— Payable month after demand.]—On a note payable a month after demand, there need not be a presentment for demand.

It was enough that there was a demand a month

in a case where he is able to show that he had funds at the appointed place to honour his acceptance.—*DOMINION BANK v. MERCIER* (1894), Q. R. 6 S. C. 221.—CAN.

ix. .]—Presentment is not

*ANDRESHIN SORABHIA v.* (1907), I. L. R. 32 Bom. 247.—IND.

**1406 x.** ———.]—The omission, in a declaration on a bill of exchange, of the averment of presentment, is fatal.—*AHERNE v. HAWKES* (1841), 2 Leg. Rep. 387.—IR.

**1406 xi.** ———.]—In an action by indorsee against acceptor of a bill of exchange accepted generally:—*Held*: not necessary to

maker of a note, made in the body of it at a particular

be (1831), 1 I. C. L. IR.

made delay in payment runs only from the day of the presentation of the note; demand alone for payment is not enough, but it must be accompanied by presenta-

(1888), M. L. C.

i. ——— Payable in an action was brought on payable in work: recover without demand & refusal to do some work, it being incumbent on to offer to perform work for plff.—*TEAL v. CLARKSON* 4 O. R. 372.—CAN.

at dence.]—By the usage in Canada, & in the absence of any legal enactment, all bills of exchange are allowed three

in of payment ought to be made on third day of grace with protest & if not paid, & these

the bill is made payable at the of the holder himself.—*KNAPP v. BANK OF MONTREAL* 1 L. C. R. 233.—CAN.

deft. on body of it in bank, to which it not been presented for payment. Deft. excepted to the on the ground of non- In giving evidence on

the note if it had been presented for payment:—*Held*: (1) it was not necessary for deft. to aver that there were funds in the bank to meet the note if it had been used for payment; (2) present- for payment was necessary to

before action (*MARTIN, B.*).—*DODD v. GILL* (1862), 3 F. & F. 261.

**1411.** ——— Payable after sight.]—No debt accrues on a bill payable after sight, until it is presented for payment.—*HOLMES v. KERRISON* (1810), 2 Taunt. 323; 127 E. R. 1102.

*Annotations*:—*Appld.* *Thorpe v. Booth* (1826), Ry. & M. *Dixon v. Nuttall* (1834), 1 Cr. M. & R. 307. 1 v. *Ellam* (1837), 1 Jur. 433.

**1412.** ——— Payable on demand at sight.]—A promissory note was made in the following form: "I promise to pay to A. or bearer, on demand, £16 at sight":—*Held*: no action was maintainable without a presentment for sight.—*DIXON v. NUTTALL* (1834), 1 Cr. M. & R. 307; 4 Tyr. 1013; 3 L. J. Ex. 290; 149 E. R. 1097.

**1413.** ——— Payable after date.]—On a note payable 4 months after date, no request for payment is necessary before action. Bringing the action is a request in law.—*FRAMPTON v. COULSON* (1743), 1 Wils. 33; 95 E. R. 476.

Essence of cause of action.]

In an action on a promissory note in the county ct. deft. wished to take the point that the note had not been duly presented for payment. The county ct. judge decided that this was a statutory defence &, as no notice had been given of it, deft. could not take the point:—*Held*: by virtue of 1882 Act, s. 87, due presentment for payment was of the essence of plff.'s cause of action, & so was not a statutory defence of which deft. need give notice.—*PRITCHARD v. COUCH* (1913), 57 Sol. Jo. 312.

**1415.** To charge indorser.]—In 1872, B. drew a bill of exchange at sight to her own order. She lived from that time to her death in 1878 at Marseilles with G. as his wife, & indorsed the bill to G. In 1870, G. indorsed it to C. The bill was presented for payment in 1880:—*Held*: time did not begin to run for the purpose of barring the right of

entitle plff. to Dr. *KAMHULA* (1917), E. L. S. AF.

**1415 i.** To charge a recovery should not be allowed in a division ct. against an indorser of a note, without proving presentment or notice.—*HIDDALL v. GIBSON* (1858), 17 U. C. R. 98.—CAN.

**1415** In a declaration, that a note was duly & of as a sufficient as against an indorser. 3 C. L. J. O. S. S. —CAN.

**1415 iii.** ———.]—Plff. issued an at- deft., as indorser of a bill of but the affidavit, on which the issued, did not to deft.:— the affidavit did not disclose a of action, & was insufficient.—*SON v. NOWLIN* (1875), 3 Fug. 210. —CAN.

**1415 iv.** ——— *supra*.—CAN.

**1415 v.** ———.]—In an action upon an promissory note payable at a place, it is not necessary to that there were not funds at the named wherewith to retire the all that is necessary in such as against an indorser presentment, non-payment, & notice of

## 226 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2 — Presentment for : Sub-sects. 1 &*

action on the bill till presentation.—*Re* BOYSE, CROFTON v. CROFTON, CANONGE'S CLAIM (1886), 83 Ch. D. 612; 56 L. J. Ch. 135; 55 L. T. 391; 35 W. R. 247.

—See, generally, Part XIII., Sect. 4, *post*.

**1416. To charge surety—Who has given bond to secure payment of note—Action on bond.**—The condition of a bond, after reciting that deft. & J. had delivered & indorsed to plff. a bill of exchange, drawn by J. & accepted by A., was, that deft. & J., or either of them, their heirs, etc., should pay, or cause to be paid, to the plff., his exors., etc., the sum secured by the bill, within one month after it should become due & payable, in case it should not be then paid by the acceptor, to plff., his exors., etc., according to the tenor of the bill, together with interest from the time the bill became due:—*Held*: to an action on the bond, it was not a good plea, that the bill, when due, had not been presented for payment to the acceptor.—MURRAY v. KING (1821), 5 B. & Ald. 105; 106 E. R. 1153.

*Annotation*:—*Dntd.* Holborow v. Wilkins (1822), 2 Dow. & Ry. K. B. 59

**1417.** —Where a person, not a party to the bill, guarantees payment by the acceptor, he is not entitled to require proof of presentment.—HITCHCOCK v. HUMPHREY (1843), 5 Man. & G. 559;

McDONALD v. (1830), 8 A. R. 553.—CAN.

**1418 vi.** —A promissory note by deft. was indorsed as "N. Co. per R."

R., if an indorser, not liable, as presentment for payment. (W. A.) & Co. v. NATIONAL CO. (1917), 11 O. W. N.

A promissory note in 6 months after date, with 7 per cent. *per annum*, pay yearly:—*Held*: in order to bind the indorser, it was necessary to present the note for each instalment of interest. JENNINGS v. NAPAHEE BRUSH CO., 4 C. L. T. 585.—CAN.

**1417 i.** Joint with R., as sureties for him, plff.:—*Held*: in default of their liability to & it

for A. R. 87.—CAN.

**1417 ii.** for in plff. of A., at a for A., at a

6 O. S.

**1417** plff. in

that in an to

AP.

Effect of

at

holder the obligation of for payment when they fall due of protesting them, if they are not d.—BANQUE UNION v. GIBEAULT 12 Q. L. R. 145.—CAN.

*v. Pleading presentment.*—An averment that the note was "duly presented" for payment to the maker, without specially stating either time or place, is sufficient to charge an indorser.—COMMERCIAL BANK v. CAMERON (1847), 3 U. C. R. 363.—CAN.

*a.* —In an action by holder against maker of a promissory note: it was not necessary to aver presentment in addition to the dishonour & non-payment of the note at maturity.—COOK v. HOOGAIN MIA (1912), 33 N. L. R. 12.—S. AF.

**1419 i.** to pay.]—Upon the issues of non-presentment & non-payment, the holder of a note is entitled to recover the indorser by or

to pa. be made after the action brought after issue joined.—McGURNEY v. (1849), 6 U. C. R. 377.—CAN.

**1419 ii.** a joint note was made payable at a particular place, & it was not shown that it was presented there when due, but one of the makers afterwards to pay it:—*Held*: sufficient of presentment to go to

Ont. Dig. 765.—CAN.

**1419 iii.** S. P. Melvill v.

**1419 iv.** S. P.

note, made after it is due, of

(1913), 18 B. C. R.

6 Scott, N. R. 540; 12 L. J. C. P. 235; 1 L. T. O. S. 109; 7 Jur. 423; 134 E. R. 683.

*ms*:—*Reid*. Carter v. White (1883), 25 Ch. D. 666. Pim v. Grasebrook (1845), 2 C. B. 429.

—Where a person guarantees payment of a promissory note, if it be not "duly honoured & paid" by the maker according to its tenor & effect, he is liable on his guarantee, if the note be not paid by the maker when due, without any presentment to him for that purpose.—WALTON v. MASCALL (1844), 13 M. & W. 452; 2 Dow. & L. 410; 14 L. J. Ex. 54; 4 L. T. O. S. 158; 153 E. R. 188.

*Annotations*:—*Reid*. Barber v. Mackrell (1892), 67 L. T. 108. *Mentd.* Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 833.

Compare cases in Sect. 4, sub-sect. 1, *post*.

To charge acceptor for honour.]—See Part XV.,

As regards bank notes.]—See BANKERS & BANKING, Vol. III., pp. 198, 199, 200.

**1419. Proof of presentment—Promise to pay—By indorser.**—In an action against the indorser of a promissory note or bill of exchange, it is sufficient evidence of presentment for payment, that deft. promised absolutely to pay the note or bill after it was due.—TAYLOR v. JONES (1809), 2 Camp. 105, N. P.

**1420.** —By drawer.]—A promise to pay a foreign bill of exchange made after it is due,

**1419 vii.** S. P. ST. STEPHEN BRANCH RY. CO. v. BLACK (1870), 13 N. B. R. (2 Hrd.) 139.—CAN.

**1419 viii.** S. P. COLWELL v. ROBERT (1877), 17 N. B. R. (1 P. & B.) 481.—CAN.

*ix.* S. P. MCCARTHY v. PHELPS (1870), 30 U. C. R. 57.—CAN. on p. 246,

*i.* —Uncontradicted evidence.]—In action by indorser against indorser of a promissory note deft. traversed the allegation of presentment. The messenger of the bank that held the note swore that he presented it at deft.'s office where it was payable, between three & four o'clock p.m., when the office was closed. Deft. denied the presentment & denied that the office was closed, but did not deny that he had been informed of the presentment next day, & he did not deny or refer to the statement of one of plffs. that on his showing deft. the notice of dishonour deft. had promised to give a good note in place of the dishonoured one, or also supply goods to the amount of it:—*Held*: plffs. had not established the fact of presentment, as there was a contradiction.—EVANS v. (1879), 1 R. & G. 64.—CAN.

bank clerk.]—In an action on a promissory note evidence was given by a of a bank, whose duty it was to presentments, to show present: something was to be the duty of the c 33 N.

*x.* note to dispense with preliminary proof of presentment All.

Letter

from which the liberty to infer a due demand of (2) the letter need not



is evidence to support the allegation in the declaration of a due presentment for payment.—G

WAY v. HINDLEY (1814), 4 Camp. 52, N. P.

Compare Nos. 1578-1580,

#### SUB-SECT. 2.—TIME FOR PRESENTMENT.

##### A. On what Day Presentment must be made.

###### (a) Bills of Exchange.

See 1882 Act, ss. 45 (1) (2), 52 (2).

**1421. In general—Reasonable time.**—A bill must be demanded in convenient time.—ANON. (1701), 12 Mod. Rep. 509; 88 E. R. 1482.

**1422. ———.**—No time is prescribed by law for the receipt of bills of exchange. It is a question of fact whether there was convenient time allowed for receiving the money (LEE, C.J.).—HANKEY v. TROTMAN (1746), 1 Wm. Bl. 1; 96 E. R. 1.

*Annotations:*—**Dbtd.** Medcalf v. Hall (1782), 3 Doug. K. B. 113. The case cannot be supported, for, according to the statement, it was not possible for the party to receive the bill sooner; reasonable time is a question of law (BUTLER, J.). **Consd.** Robson v. Bennett (1810), 2 Taunt. 388.

**1423. Bill not payable on demand—At or after sight—Presentation after days of grace—Discharge of drawer.**—A bill was drawn payable at 6 days sight, & presented & accepted on Feb. 8, which made it payable the 14th, & the 3 days of grace brought it to the 17th, which was a Saturday. The acceptor stopped payment on the Tuesday following, before which the bill was not tendered:—**Held:** the drawer was discharged at the end of the 3 days of grace.—COLEMAN v. SAYER (1728), 2 Stra. 829; 1 Barn. K. B. 303; 93 E. R. 878.

**1424. ——— On day bill due.**—Where a bill of exchange is payable a specified number of days after sight, allegation of presentment for payment, when the bill became due & payable, is supported by proof of a presentment on the day when the bill in fact became due according to the previous presentment for acceptance.—FORMAN v. JACOB (1815), 1 Stark. 46, N. P.

**1425. ——— At maturity of acceptance for honour.**—A bill of exchange, payable at first sight, having been presented for acceptance & refused, & duly protested, was 8 days afterwards accepted by a third person for the honour of the drawer, & when at maturity, according to that acceptance, was presented for payment both to the drawee & the acceptor for honour. In actions against the latter & the drawer:—**Held:** the presentments for payment were made at a proper time.—WILLIAMS v. GERMAINE (1827), 7 B. & C. 468; 1 Man. & Ry. K. B. 394; 6 L. J. O. S. K. B. 90; 108 E. R. 797.

*Annotation:*—**Consd.** Mitchell v. Baring (1829), 10 B. & C. 4. See, further, Part XV., post.

**1426. ——— Conditional acceptance.**—An acceptance in the following form: "Accepted, payable on giving up bill of lading for seventy-six bags of clover-seed, per A., at the L. & W. Bank," is a conditional acceptance, as against the acceptor binding the holder of the bill, upon presenting it for payment, to give up the bill of lading, but not binding him to present on the very day the bill falls due.—SMITH v. VERRUS (1800), 9 C. B. N. S. 214; 30 L. J. C. P. 56; 3 L. T. 583; 7 Jur. N. S. 395; 9 W. R. 146; 142 E. R. 84.

*Annotations:*—**Refd.** Eshworth v. Alliance Marine Inace. (1873), L. R. 8 C. P. 596; Decroix, Verley v. Meyer (1890), 25 Q. B. D. 343.

**1427. ——— Payable on day certain—Within reasonable time.**—There is no certain time assigned by the custom for the payment of inland bills of exchange; the money ought to be demanded in reasonable time, after it is payable, & if it is not paid, the drawer will be charged.—TANSELL & LEE v. LEWIS (1695), 1 Ld. Raym. 743; 91 E. R. 1307.

*Annotations:*—**Refd.** Brown v. Harraden (1791), 4 Term Rep. 148; Walwyn v. St. Quintin (1797), 1 Bos. & P. 852; Morris v. Richards (1881), 45 L. T. 210.

**1428. ——— On day bill payable.**—In an action against indorser of a bill of exchange, if plff. do not allege a demand, & refusal by the acceptor, on the day when the note was payable, it is error, & not cured by verdict.—RUSHON v. L. (1781), 2 Doug. K. B. 679; 90 E. R. 430.

(1796), P. (1827), 1 Man. & Ry. K. B. 394. Dalby v. Hirst (1819), 1 Brod. & Bing. 1

**1429. ——— Demand made on second day of grace.**—Where by mistake payment of a

(1847), 10 L. L. R. 274; Bl. D. & Osb.

no question is raised at the trial the county ct. judge as to the suff. of the proof of the presentment of it, it is not open to deft.

if an appeal from the verdict, as the an opportunity the evidence, if the had been raised before him. —PROCTOR v. PARKER (1899), 13 Man. L. R. 528.—CAN.

a. Application of 12 Vict. c. 92.] The above Act, as to presentment of notes, does not

(1850), 7

#### XII. SECT. 2, SUB-SECT. 2.

**1431 I. In general—Reasonable time.**—The holder of a bill of exchange, who locks it up for two years, makes it his

& cannot have recourse to the person from whom he received it. —ROULEAU v. TOURANGEAU (1820), 2 R. de L.

was drawn on Aug. 27, & after the hands of two in was presented by holder on Sept. 1, when it was

with (1871), 3 since.—HARRIS L. O. 8. CAN.

**1431 III. ——— Mixed question of law & fact.**—Whether due diligence has been used in the presentment of a exchange to the drawee, is a question of law & fact; & the question has been properly left to the jury, the ct. will not interfere with their verdict, unless it clearly appears that they have come to wrong conclusion.—PRILEY v. HOWARD (1844), 2 Kerr, 518.

**Bill not or after sight.**—A bill drawn in Toronto, on Aug. 6, 1849, by a

in bills, upon a party li in New York, payable at sight, in favour of a party living in Illinois, to be sent there as a remittance & for circulation, was presented in

the delay could not, in the to on the part of the —BOYER v. (1860), 7 U. C.

— **Payable reasonable time.**—A hundi was drawn in Calcutta upon a firm at J. & made payable on arrival at the place. The hundi reached J. on Apr. 5, but was not presented for ment until the 29th:— hundi time; (2) in

within n the situation & interests of both drawer & payee & to the of the place where the hundi was drawn from that where it was to be —MURRY LOLL v. L. R. 11 Calc. 344.—IND.



2.— *payment: Sub-sect. 2,*  
A. (a)

bill of exchange, dated Nov. 1, payable 3 months after date, was demanded from the acceptor on 3, in an action by indorsee against drawer:— as the bill did not become payable until Feb. 4, which was allowing the 3 days of grace, the demand was premature, & plff. must be non-suited.—*WIFFEN v. ROBERTS* (1795), 1 Esp. 261, N. P.

*Annotations:—Held.* Rouquette v. Overmann (1875), L. R. 10 Q. B. 525. *Mentd.* Kennedy v. Thomas (1894), 43 W. R. 641.  
further, Part XIV., Sect. 2, sub-sect. 3,

**1430.** ——— *Sunday.*—An averment in a declaration on a bill of exchange, that when it became due & payable according to the tenor & effect thereof, to wit, on Mar. 31, 1822, it was duly for payment:—*Held:* sufficient on a demurrer, assigning for cause, that Mar. 31 was on a Sunday, as it was enough to state that the bill was presented when it became payable, according to its tenor, without mentioning any particular day.—*BYNNER v. RUSSELL* (1822), 1 Bing. 23; 7 Moore, C. P. 206; 130 E. R. 10.

*Annotation:—Consd.* Ring v. Roxbrough (1832), 2 Cr. & J. 418.

**1431. Bill payable on demand—Reasonable time—Question of law.**—Where a bill payable on demand is taken in payment for goods, it is not necessary to present it the same day on which it is received. *Semle:* reasonable time is a question of law.—*APPLETON v. SWEETAPPLE* (1782), 3 Doug. K. B. 137; 90 E. R. 579.

—*Held.* Robson v. Bennett (1810), 2 Taunt. 388.  
further, Sect. 2, sub-sect. 11, post: &

and

Act, s. 74.

**Reasonable time—Question for jury.**—The holder of a cheque ought to present it for payment within a reasonable time; & it is a question for the jury on an issue of due presentment, whether this rule has been complied with.

Where a cheque drawn on a country banker,

dated Mar. 19, was not presented until Apr. 6, & no cause was assigned for the delay, but the drawer had not sustained loss by the non-presentment at an earlier period:—*Held:* the drawer was liable to be sued on the cheque.—*SERLE v. NORTON* (1841), 2 Mood. & R. 401, N. P.

*Annotations:—Held.* Robinson v. Hawksford (1846), 9 Q. B. 52; Ramchurn Mullick v. Luchmeechund Radakissen (1854), 9 Moo. P. C. C. 46; Laws v. Rand (1857), 3 C. B. N. S. 442.

**1433.** ——— *Whether or not a cheque has been presented within a reasonable time of its issue under 1882 Act, s. 74 is a question for the jury.*—*WHEELER v. YOUNG* (1897), 13 T. L. R. 468.

**1434.** ——— *Fund lost during delay.*—To an action by holder against drawer of a cheque it is no answer that the cheque was not presented in reasonable time, unless, during the delay, the fund has been lost, as by failure of the banker.—*ROBINSON v. HAWKSFORD* (1846), 9 Q. B. 52; 15 L. J. Q. B. 377; 7 L. T. O. S. 204; 10 Jur. 984; 115 E. R. 1195.

*Annotations:—Consd.* Ramchurn Mullick v. Luchmeechund Radakissen (1854), 9 Moo. P. C. C. 46. *Held.* Laws v. Rand (1857), 3 C. B. N. S. 442. *Consd.* Heywood v. Pickering (1874), L. R. 9 Q. B. 428. *Held.* Re Bethell, Bethell v. Bethell (1887), 34 Ch. D. 5

**1435.** ——— *Delay at request of drawer.*—Where a void cheque was given by purchasers & received by vendors for the consideration money for an estate, & presentation of the cheque was delayed by the vendors until after an event, which never happened, at the request of the authorised agent of the purchasers, & the bankers became bkpt.:—*Held:* in the circumstances, there was no laches in the non-presentation of the cheque.—*WARD (LORD) v. OXFORD, WORCESTER & WOLVERHAMPTON RY. CO.* (1852), 2 De G. M. & G. 750; 22 L. J. Ch. 905; 22 L. T. O. S. 13; 1 W. R. 9; 42 E. R. 1065, L. JJ.

**1436.** ——— *Within six years.*—As between the drawer of a cheque & the holder, no time, within six years, is unreasonable for presentment to the banker for payment, unless some loss to the drawer is occasioned by the delay.—*LAWS v. RAND* (1857), 3 C. B. N. S. 442; 27 L. J. C. P. 76; 30 L. T. O. S. 286; 4 Jur. N. S. 74; 6 W. R. 127; 140 E. R. 812.

—*Held.* Heywood v. Pickering (1874), L. R. 9 Q. B.

**PART XII. SECT. SUB-SECT. 2.**  
—A

1. Bill  
to deft. corpn. an instrument  
in the form of a cheque, but not drawn  
on a chartered bank. The co., on  
the instrument was drawn,  
to do business on Oct. 14.

on defta.

within a reasonable time  
after its issue.—*CULLINGHAM v. CALAGARY*  
(1916), 34 W. L. R. 4; 10 W. W. R.  
1; *reversd.* on another point, 34 W. L.  
1032; 10 W. W. R.

**1431 H.** ——— *A bill of*  
*change payable*

May  
not  
ble  
Qua  
S. L. T. 31.

D. his cheque on a bank at L., to take  
up a note which had matured. The  
cheque was payable to D., or bearer.  
D., without retiring the note, got the  
cheque cashed by resp. at M. 3 days  
after its issue, & resp. deposited same  
in a bank at M. The bank at L.  
subsequently refused payment. The  
presentment of the cheque at L. was  
on the 8th day after its issue:

within a reasonable time  
issue, in accordance with the  
of trade & of banks, within  
s. 45 (2) (b), & s. 73  
Q. R. 3 Q. B.

r. warned plff.,  
s. that, in co  
upon it, the bank  
be for him to withdraw  
plff. handed deft. his  
& took deft.'s  
in return.

The cheque was immediately sent to  
the bank for acceptance, & was duly  
certificated, but was only presented  
for payment on the following day. In  
the meantime the bank had suspended:  
—*Held:* the particular facts of the  
case requiring from deft. special  
vigilance & celerity, the cheque had  
not been presented for payment in a

73. v. ARCAD  
9 S. C. 121.

L. gave S. a cheque for a  
bt, bearing him not to present it to  
the bank before ten days. S. trans-  
ferred the cheque to C., who four or five  
days afterwards transferred it by in-  
dorsement to plff., who, a fortnight  
later, presented it for payment to  
bank, where there were no funds  
*Held:* the presentation of the che  
at the bank, even a month after its  
to

(1893), Q. R. 14 S. C. 77.  
—CAN.

**1437. — Cheque from agent.**—A creditor who takes from his debtor's agent on account of the debt the cheque of the agent, is bound to present it for payment within a reasonable time, & if he fails to do so, & by his delay alters for the worse the position of debtor, debtor is discharged, although he was not a party to the cheque.—*HOPKINS v. WARE* (1860), L. R. 4 Exch. 208; 38 L. J. Ex. 147; 20 L. T. 608.

See, generally, AGENCY, Vol. I., pp. 384–386.

**1438. Day after receipt—Practice of London bankers.**—By the practice of London bankers, if one banker who held a cheque drawn on another banker, presented it after four o'clock, it was not then paid, but a mark was put on it, to show that the drawer had assents, & that it would be paid, & cheques so marked had a priority, & were exchanged or paid next day at noon, at the clearing house:—*Held*: (1) a cheque presented after four, & so marked, & carried to the clearing house next day, but not paid, no clerk from the drawee's house attending, need not be presented for payment at the banking house of the drawee; (2) it was not necessary to present for payment a cheque payable on demand till the day following the day on which it was given; (3) a person receiving a cheque on a banker was equally authorised in lodging it with his own banker to obtain payment, as he would be in paying it away in the course of trade.—*ROBSON v. BENNETT* (1810), 2 Taunt. 388; 127 E. R. 1128.

—*Foll.* *Moule v. Brown* (1838), 1 Arn. 79. *Refd.* *Boddington v. Schlenker* (1833), 1 Nev. & M. K. B. 340.

**1439. —**—*POCKLINGTON v. SILVESTER* (1817), *Chitty on Bills of Exchange*, 11th ed., p. 361.

**1440. — Unless extended by consent.**—The holder of a cheque is, in general, bound to present it for payment not later than the day following that on which he receives it, whether the presentment is made by himself or through his bankers, but the time for presentment may be extended by the assent of the drawer, express or implied.—*ALEXANDER v. BURCHFIELD* (1842), 7 Man. & G. 1061; 3 Scott, N. R. 555; 11 L. J. C. P. 253; 135 E. R. 431.

—*Refd.* *Laws v. Rand* (1857), 3 C. B. N. S. 442; *Hare v. Henty* (1861), 10 C. B. N. S. 65; *Heywood v.* (1874), L. R. 9 Q. B. 428.

**1441. Country cheque—Received by London banker by post.**—A banker in London, who receives a cheque by the general post, is not bound to present it for payment till the following day.—*RICKFORD v. RIDGE* (1810), 2 Camp. 537, N. P.

*Annotations*:—*Foll.* *Moule v. Brown* (1838), 4 Bing. N. C. 266. *Consd.* *Alexander v. Burchfield* (1842), 7 Man. & G. 1061. *Appl.* *Hare v. Henty* (1861), 10 C. B. N. S. 65. *Refd.* *Firth v. Brooks* (1861), 4 L. T. 467; *Prudeau v. Criddle* (1869), 35 L. J. Q. B. 232; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526; *Heyring* (1874), 43 L. J. Q. B. 143.

**1442. Holder at distance from bank on which drawn—Cheque passed through intermediate**

**a. — Necessity for pleading.**—In an action by indorsee on a cheque payable to order, it is not necessary to show that the cheque had been presented within a reasonable time at the bank where it was payable, & that payment had been refused, & that the cheque had been protested for payment.—*RENNAN v. EVARD* (1877), 17 B. C. 199.—*CARL.*

**d. Cheque**  
Cashed by  
branch of a  
upon another branch of  
that co. & the branch which cashed  
the cheque posted it to the branch on  
which it was

but too late for a mail  
at one

bank.]—A cheque drawn by F. on a banker at Bath, was cashed for debt. by a branch of the N. bank at Malmesbury, on Mar. 28. The same day it was forwarded to the principal N. bank at Melksham, twelve miles from Bath, & on the 31st it was presented at Bath & dishonoured:—*Held*: the presentment was not in time to give the N. bank any claim against debt.—*MOULE v. BROWN* (1838), 4 Bing. N. C. 266; 1 Arn. 79; 5 Scott, 694; 7 L. J. C. P. 111; 2 Jur. 277; 132 E. R. 790.

*Annotations*:—*Dist.* *Robinson v. Hawkford* (1846), 9 Q. B. 52. *Refd.* *Mulick v. Radakissen* (1854), 23 L. T. O. 25; *Hare v. Henty* (1861), 10 C. B. N. S.

**1443. — Forwarded by post.**—The general rule that the holder of a cheque is only bound to send it to his agent for presentment by the post of the day after that on which he has received it, & that the agent has the following day to present it for payment, applies not only as between the parties to the cheque, but as between banker & customer, unless circumstances exist from which a contract or duty on the part of the banker to present earlier, or to defer presentment to a later period can be inferred.

Where a cheque upon a bank at Lewes was paid on a Friday morning into a bank at Worthing, by a customer of the last bank, to the credit of his account with that bank:—*Held*: presentment of the cheque for payment at the Lewes bank on the following Monday was in time, as the Worthing bankers were only bound to send it by Saturday's post to their agent at Lewes.—*HARE v. HENTY* (1861), 10 C. B. N. S. 65; 30 L. J. C. P. 302; 4 L. T. 363; 25 J. P. 678; 7 Jur. N. S. 523; 9 W. R. 738; 142 E. R. 374.

—*Foll.* *Prudeau v. Criddle* (1869), L. R. 4 Q. B. 465. *Consd.* *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526. *Refd.* *Firth v. Brooks* (1861), 4 L. T. 467; *Bailey v. Bodenham* (1864), 16 C. B. N. S. 288; *Heywood v. Pickering* (1874), 43 L. J. Q. B. 143; *Wills & Dorset Bank v. Cook* (1880), 53 J. P. 791.

**1444. — On Wednesday,**  
May 6. A. received at Monmouth a cheque drawn upon M. & Co., bankers at R., about ten miles distant. On Friday, the 8th, he paid it into his bankers at Monmouth, & they on the same day sent it by post to their London agents, the C. bank, to be passed through the country clearing house there. The drawers' London agents were B. & Co., whose names appeared in a printed memorandum at the foot of the cheque, but their account with them was closed on Thursday, the 7th. The cheque being refused by B. & Co. at the clearing house, the C. bank sent it by post on Saturday, the 9th, for payment to the drawers, who kept it until Friday, the 15th, & then returned it to the C. bank, who received it on Saturday, the 16th, & sent it by that day's post to their correspondents, the Monmouth bank, who, receiving it on Sunday, the 17th, sent notice of the by the post on Tuesday, the 19th, to the drawer, whom it reached on the 20th. A run upon the bank of M. & Co. commenced on Monday, the 11th, & on Wednesday, the 13th, at noon,

no such omission to present  
payment within  
time as discharged the  
s. Cook, (1880) C. 1  
AF.

Vol. III., pp.



2.—*Presentment for payment: Sub-sect. 2, A. (b) & (c).]*

finally stopped payment. In an action by the Monmouth bank against the drawer, it was proved that the drawers sent cash through the post to country bankers, in payment of cheques drawn upon them, as late as Monday, the 11th, but did not honour any cheques forwarded to them by bankers after Thursday, the 7th, that if the cheque had been received by them by post from the C. bank on Friday, the 8th, it would not have been paid, but that if presented across the counter at any time before the final stoppage on Wednesday, the 13th, it would have been paid:—*Held*: the presentment was not in due time.—*BAILEY v. BODENHAM* (1864), 16 C. B. N. S. 288; 33 L. J. Q. P. 252; 10 L. T. 422; 10 Jur. N. S. 821; 12 W. R. 865; 143 E. R. 1139; *sub nom.* *BAILEY v. BODENHAM*, 4 New Rep. 110.

*Annotations*: *Reid*, *Prideaux v. Criddle* (1869), L. R. 4 Q. B. 455; *Heywood v. Pickering* (1874), L. R. 9 Q. B. 428.

*& London clearing house.]*

—A country banker, who receives from a customer a cheque upon a banker in another town, is not bound to send it to that town for presentation, but may send it to his London agent to pass through the clearing house.—*PRIDEAUX v. CRIDDLE* (1869), L. R. 4 Q. B. 455; 10 B. & S. 515; 38 L. J. Q. B. 232; 20 L. T. 695.

*Annotation*: *Reid*, *Heywood v. Pickering* (1874), L. R. 9 Q. B. 428.

1446. *Forwarded by post.]*—On Friday, at nine o'clock p.m., deft.'s son called at the residence of plffs.' salesman, five miles from Blackburn, & paid him a cheque on a Liverpool bank. The salesman was ill at the time, but on the following Monday, he handed the cheque to plffs. at their place of business at Blackburn, & it sent off the same day by plffs. to their agents in Liverpool, & on Tuesday morning it was presented & payment refused:—*Held*: there was no loss of time on plffs.' part in presenting the cheque for payment.—*FIRTH v. BROOKS* (1861), 4 L. T. 467.

1447. *Crossed cheque—Through London clearing house.]*—By the usage in the City of London, a person receiving a cheque with his banker's name written across it, paid it in at the banker's, & the banker, if he received it in time, presented it at the clearing house, & obtained payment the same day. A debtor paid his creditor by a crossed cheque, & the latter, on the same day, transmitted it to his banker. The banker negligently, as was alleged, omitted to present it at the clearing house in time for that day, when it would have been paid, & on the next it was dishonoured, the firm on which it was drawn having stopped payment:—*Held*: the supposed negligence of the banker, though it might render him liable to his customer, did not discharge the drawer, the holder of the cheque, being entitled, by the general law, to present it the day after he received it, & no custom of the city being proved, as between debtor & creditor, that a crossed cheque, if received by the latter & sent by him to his banker in

time, must be cleared the same day.—*BODDINGTON v. SCHLENCKER* (1833), 4 B. & Ad. 752; 1 Nev. & M. K. B. 540; 2 L. J. K. B. 138; 110 E. R. 639.

*Moule v. Brown* (1838), 4 Bing. N. C.

1448. *Within reasonable time.]*—A cheque crossed in blank, being given in payment of a bill, was duly paid by the holder into his banker's, who, 2 days afterwards, presented it for payment, when it was returned dishonoured. In an action on the bill:—*Held*: the plea alleging that the cheque had not been presented within a reasonable time could not be sustained, as the crossing of the cheque was a direction to the holder to pay it only through a banker, & he, the holder, had done all that was required of him to comply with that request, by paying it into his banker's within a reasonable time, & could not be held responsible for any delay that afterwards took place.—*STRINGFIELD v. LANEZZARI* (1867), 16 L. T. 361.

*1 cheques generally, see Part XIX., Sect. 2,*

1449. *Foreign cheque—Drawn in London on Jersey—Sent by post.]*—A. in London drew a cheque on B. & Co., bankers at Jersey, in favour of C., on Jan. 27, & C. handed it to a London bank on the 28th, who, having no agent at Jersey, the same day sent the cheque by post direct to B. & Co. demanding payment. The cheque in due course of post would have arrived at Jersey on the 29th. B. & Co. stopped payment on Feb. 4, & on Feb. 7 returned the cheque marked "refer to drawer." By the custom of London bankers, when a foreign cheque was paid to a banker by a customer, if the banker had no agent at the place where the cheque was payable, he sent the cheque direct to the banker to whom it was drawn demanding payment, & the banker immediately either remitted the money or returned the cheque, & cheques drawn on bankers in Jersey were considered foreign cheques:—*Held*: there was a due presentment for payment of the cheque according to the custom of bankers, & C. had been guilty of no laches so as to make the cheque his own.—*HEYWOOD v. PICKERING* (1874), L. R. 9 Q. B. 428; 43 L. J. Q. B. 115.

1450. *Draft—Reasonable time—Question of law.]*—The not presenting a draft upon the same day on which it is received is not laches. *Semble*: reasonable time is a question of law.—*MEDCALF v. HALL* (1782), 3 Doug. K. B. 118; 99 E. R. 506.

*Annotation*:—*Reid*, *Darbyshire v. Parker* (1805), K. B.

*See*, No. 1456,

(c) *Promissory Notes and Bank*

1852 Act, ss. 86 (1) (2), 87.

1451. *Promissory note—In general—Note retained from November to January.]*—The third indorsee of a promissory note kept it from Nov. 1 to Jan. 7 without receiving it of the maker of the note. In an action against the first indorsee, without notice, plff. was nonsuited for his neglect.—*PERYS v. LAMBERT* (1726), 2 Stra. 707; 93 E. R. 796, N. P.



**Payable to order—Whether immediately when due.]—**A. drew a promissory note payable to B. or order, which B. indorsed, having given no value for it & knowing that A. was insolvent. In an action by the indorsee against B.:—*Held*: it was not necessary to prove that the note was presented for payment to A. immediately when it became due.—**DE BERDT v. ATKINSON** (1794), 2 Hy. Bl. 336; 126 E. R. 582.

*Consd.*—**Terry v. Parker** (1837), 6 Ad. & El. 502. *Obtd.*—**Sands v. Clarke** (1849), 8 C. B. 731. *Mentd.*—**Leach v. Lowitt** (1813), 4 Taunt. 731; **Free v. Hawkins** (1817), 8 Taunt. ; **Maltass v. Siddie** (1859), 6 C. B. N. S.

**1453. — Not payable on demand—Presentment three days after due.]—**A. being in insolvent circumstances, B. undertook to be a security for a debt owing from A. to C., by indorsing a promissory note made by A. payable to B. at the house of D. The note was so made & indorsed with the knowledge of all parties. Just before it became due B. being informed that D. had no effects of A. in his hands, desired D. to send the note to him, B., & said he would pay it, B. having then a fund in his hands for that purpose. It was not presented at D.'s house till 3 days after it was due:—*Held*: C. could not maintain an action against B., on the note, without having used due diligence in presenting the note as soon as it was due to D., for payment.—**NICHOLSON v. GOUTTIT** (1796), 2 Hy. l. 609; 126 E. R. 732.

*Consd.*—**Haynes v. Birks** (1804), 3 Bos. & P. *Mentd.*—**Edalle v. Sowerby** (1809), 11 East, 114.

**1454. — Statute of Limitations.]—**The above Act is no bar to an action on a promissory note, payable "24 months after demand," if presented for payment within six years before the

There was evidence to show on account:—*Held*: the was sufficient to charge the maker.—**MILLER v. DODGE** (1891), 23 N. S. R. 191.—CAN.

**1.** — As between holder & indorsers a note must be presented, so as to bind them, on the day it is payable, & at the place where it is payable, but, as between holder & maker, it is enough to present it any time within the period fixed by Stat.

In a holder & maker, the note was made in able in Montreal, & was not until five years after maturity. before action:—*Held*: suff.—**McLELLAN v. McLELLAN** (1866), 17 O. P. 109.—CAN.

**2.** — Presentment of a promissory note only after due date affords no defence to an on the note, by payee.—**MICHAELSON v. LOW** (1844), 2 S. R. 324.—S. AF.

**3.** — A letter written by the attorney of the indorsee to the maker, stating that the note, together with other in his hands

was to pay security for sent on Mar. 4, & not being attended to, the note was presented to the maker for payment on June 17 following, & notice of dis- indorser on was liable.—

**4.** — (1844), 2 Kerr, 357. —CAN.

**5.** — When due presentment proved.]—In an by holder against makers & indorsers of a promissory note, plff. gave evidence that the note was not paid at maturity &

notice sent:—*Held*: It from the evidence, in of any weakening of it by on, that presentment was made on the day the note **1 O. W. R. 110; 22 O. L. T. Occ. N. 129.—CAN.**

any note was a bank. At the that but for did not it

—*Qu.*: whether it rea- inferred from the nidge had done, that the was before **ROBERTSON v. NORTH-WESTERN** **STER CO.** (1910), 13 W. L. R. CAN.

note was made & indorsed on Aug. 1891, & was only presented to the indorser for payment on May 7, 1894, the maker having been in the holder's employment during nearly all the intervening time, until his death, which occurred before presentment for payment, & never having paid anything on account:—*Held*: the indorser was not liable.—**BANQUE DU PEUPLE v. DENICOURT** (1896), Q. R. 10 S. C. 428.—CAN.

**1455 ii.** — A demand note, the consideration for which was a civil loan on the part of relatives of the maker & carrying interest semi-annually, is presented for payment within a reasonable time two years after its date, & the indorsers will not be discharged for late demand of payment.—**VERMETTE v. FORTIN** (1917), Q. R. 32 S. C. 229.—CAN.

action commenced.—**THORPE** **Booth** **Ry. & M. 388, N. P.**

**Payable on demand—Reasonable time—Reasons for delay.]—**The law with regard to time for the presentation of a promissory note, payable on demand, requires that the presentation for payment be made within a reasonable time, i.e., a period reasonable with reference to the circumstances connected with each particular

Where a promissory note, dated Feb. 10, & indorsed, though made payable on demand, but the payment of which was not contemplated by the makers at any immediate or specific date, was not presented to the payee for payment until Dec. 14 in the same year:—*Held*: it appearing from the evidence that the note was meant to be, to a greater or less extent, a continuing security, the delay in presentation was, in the circumstances, not unreasonable, & the holders of the note were entitled to recover thereon.—**CHARTERED MERCANTILE BANK OF INDIA, LONDON, & CHINA v. DICKSON** (1871), L. R. 3 P. C. 574; 8 Moo. P. C. C. N. S. 1; 17 E. R. 213, P. C.

**1456. Non-negotiable note or draft—Reasonable time.]—**A creditor accepts a note or draft of his debtor upon a third person, to be paid a sum of money for value received. If he holds it an unreasonable time before he demands the money, & the person upon whom it is drawn becomes insolvent, it is the creditor's own loss, though this draft be not a bill of exchange or negotiable.—**CHAMBERLYN v. DELARIVE** (1767), 2 Wils. 353; 95 E. R. 854.

—*Appl.*—**Grimth v. Owen** (1844), 3 Dow. & L. 190, No. 1450, ante.

**1455 iii.**

the Mono- is of the as by favour of debt. was indorsed to for value on Oct. 30, & was on the same day to another bank there for collection. On Oct. 31, the latter bank returned the certificate to plff. with the notation that the debtor bank had suspended payment. This communication did not reach plffs. till Nov. 2, & on that day they notified by letter that the certificate had for this letter ever reached debt.

In M it to the debtor bank for

was on that by a & notice of non-payment sent by to debt.:—*Held*: in the absence of evidence the ot. must be governed by the law of Saskatchewan, & the presentment was within a reasonable time having regard to the circumstances.—**SECURITY NATIONAL BANK v. FURTT** (1910), 14 W 318.—CAN.

**1455 iv.** — Interest payable in instalments.]—A promissory note payable on demand, with interest payable half-yearly on specified dates, was presented for payment about 22 months after its date, three half-yearly instalments of interest having been paid in the meantime:—*Held*: there was nothing to show it was not presented within a reasonable time.—**COMMERCIAL BANK v. ALLAN** (1894), 10 Man. L. R. 320.—CAN.

*for payment:* . 2, A.  
*& B.;*

**1457. Bank note—Reasonable time.]—A**  
 note for £500 was paid to plff. after dinner, who sent it the next morning at nine, when the banker had stopped payment:—*Held:* there was no laches in plff., so as to fix the loss on him, & in all such cases there must be a reasonable time allowed, consistent with the nature of circulating paper credit.—**FLETCHER v. SANDYS** (1740), 2 Stra. 93 E. R. 1101, N. P.

**1458. Country bank note—Received on Friday—Bank stopped on Saturday.]—**Where a servant received on behalf of his master, in payment of goods sold, country bank notes at one o'clock on a Friday afternoon, & paid them to his master after banking hours on Saturday evening, & between three & four in the afternoon of Saturday the bank stopped payment:—*Held:* the master was not guilty of laches in not presenting the notes before the bank stopped on the Saturday.—**JAMES v. HOLDITCH** (1820), 8 Dow. & Ry. K. B. 40.

*See, generally, BANKERS & BANKING, Vol. III., pp. 198-200.*

*See, further, Sect. 2, sub-sect. 11, 1*

*B. must be made.*

*See 1882 Act, s. 45 (3).*

**1459. Presented at bank after banking hours.]—**If a bill be accepted payable at A.'s who is the acceptor's banker, the party taking such special acceptance, which he is not bound to do, thereby impliedly agrees to present it for payment within the usual banking hours at the place where it is made payable, & if he present it after such hours, without effect, it is no evidence of the dishonour of the bill, so as to charge the drawer.—**PARKER v. GORDON** (1800), 7 East, 385; 0 Esp. 41; 3 Smith, K. B. 358; 108 E. R.

*Camp. Conad.*

—The grantor of a  
 dated Oct. 30,  
 to pay to X. at a  
 monthly  
 therein  
 address in  
 by  
 28, the like  
 day  
 if

all  
 shall  
 not  
 of them. On  
 for  
 in  
 but

the maker of the note, as if  
 the law that presentment on  
 of payment was a  
 the obligation, either of the  
 or of the maker

of  
 K.  
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T.

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Deft. was in

he time  
 16 months

for debt:—*Held:* as

**Garnett v. Woodcock** (1816), 1 Stark. 475; **Rowe v. Young** (1820), 2 Bll. 391. *Reid.* **Garnham v. Schmoll** (1814), 5 Taunt. 344; **Triggs v. Newnham** (1826), Moore, C. P.

**1460. —.]—**A presentment of a bill of change at the banking house after banking hours, when the house is shut, is not a sufficient presentment to charge the drawer, & no inference is to be drawn from the circumstance of the bill being presented by a notary, that it had been before duly presented within banking hours.—**ELFORD v. TEED** (1813), 1 M. & S. 28; 105 E. R. 11.

*Annotations:—Reid.* **Rowe v. Young** (1820), 2 Bll. 391; **Triggs v. Newnham** (1826), 10 Moore, C. P.

**Person at bank giving answer.]—**A presentment of a bill of exchange at the banking house where payable, after banking hours, is sufficient, if a person be stationed at the banking house & return for answer "no orders."—**GARNETT v. WOODCOCK** (1817), 6 M. & S. 44; 105 E. R. 1159.

*Fold.* **Crook v. Jadis** (1833), 6 C. & P. 191. *Reid.* **Whitaker v. Bank of England** (1835), 1 Cr. M. & R. 744.

**1462. —.]—**Presentment for payment at a bank, after banking hours: *Held:* sufficient presentment, where a person, who usually answered clerks on such occasions, stated that there was "no orders."—**CROOK v. JADIS** (1833), 6 C. & P. 191, N. P.; *subsequent proceedings* (1834), 5 B. & Ad. 009.

*Annotations:—Mentd.* **Backhouse v. Harrison** (1834), 5 B. & Ad. 1098; **Foster v. Pearson** (1835), 1 Cr. M. & R. 849; **Glyn v. Soares** (1835), 1 Y. & C. Ex. 644.

**1463. — Bank of England.]—**A customer of the Bank of England was in the habit of making his acceptances payable at the Bank. One of such acceptances being presented for payment at eleven o'clock in the morning was dishonoured for want of assets, & was presented again by a notary at six in the evening, when the same answer was given by a person stationed for that purpose:—*Held:* the Bank, although they had before six o'clock received assets, were not bound to pay the bill, it being after the usual hours of business. it was the duty of the Bank to have

was no averment by deft. that the note would, if presented at the due date, have been paid, it was competent for plff. at any time after the due date to present the note for payment, & judgment altered to one of absolute from the instance so as to give plff. an opportunity of presenting the note for payment before again suing deft. thereon.—**KUPER v. ZWIRKLAAR** (1906), 23 S. C. 748.—S. A.P.

*Time extended—By*  
*of note.]—*The indorser of a promissory note due Feb. 11 gave the holder a memorandum as follows: "My note, becoming due 10th instant, good for 10 days after date." The note to which he referred the 11th, there was no note, it was presented Feb. 24. *liable.—BURNETT v. 3 R. L. O. S. 448.*

## **PART XII. SECT.**

**1466 I. Presented at bank after banking hours.]—**Presentment at the closed doors of a bank after its usual office hours is not such a presentment as is



informed the notary that they had received assets, & that the bill would be paid the following day.—

**WHITAKER v. BANK OF ENGLAND** (1835), 1 Cr. M. & R. 744; 6 C. & P. 700; 1 Gale, 54; 5 Tyr. 268; 4 L. J. Ex. 57; 149 E. R. 1280.

*Annotation*:—**Held**. **Robartes v. Tucker** (1851), 16 Q. B. 560.

*See, also*, **BANKERS & BANKING**, Vol. III., pp. 201–203.

**1464. Out of usual hours**—**Person at place seeing bill or giving answer.**—Presentment of a bill out of the usual hours is sufficient, provided somebody be at the place & also sees the bill, or gives an answer; otherwise it is not.—**HENRY v. LEE** (1814), 2 Chit. 121.

*Annotations*:—**Held**. **Burton v. Plummer** (1834), 4 Nev. & M. K. B. 315; **Hill v. Barry** (1842), 7 Jur. 10.

**1465. Evening.**—Presentment of a bill of exchange at a counting house, where it is made payable, between six & seven o'clock in the evening is sufficient.—**MORGAN v. DAVISON** (1815), 1 Stark. 114, N. P.

**1466. —.**—The presentment of a bill of exchange for payment at the house of a merchant residing in London, at eight o'clock in the evening of the day it becomes due, is sufficient to charge the drawer.—**BARCLAY v. BAILEY** (1810), 2 Camp. 527, N. P.

*Annotation*:—**Held**. **Triggs v. Newnham** (1825), 10 Moore, C. P. 249.

**1467. — House shut up.**—A presentment of a bill of exchange for payment at a house in London, where it is made payable, at eight o'clock in the evening of the day when it becomes due, is sufficient to charge the drawer, although at that hour the house be shut up, & no person there to pay the bill.—**WILKINS v. JADIS** (1831), 2 B. & Ad. 188; 9 L. J. O. S. K. B. 173; 109 E. R. 1113.

*Annotations*:—**Held**. **Curlewis v. Corfield** (1841), 1 Q. B. 814; **Campbell v. Webster** (1845), 2 C. B. 258; **Jackson v. Collins** (1848), 12 Jur.

**1468. —.**—Presentment of a bill of exchange to the acceptor, a merchant, between eight & nine o'clock at night, is sufficient.—**TRIGGS v. NEWNHAM** (1825), 10 Moore, C. P. 249; 3 L. J. O. S.

#### SUB-SECT. 3.—BY WHOM PRESENTMENT MAY MADE.

*See* 1882 Act, s. 45 (3).

**1469. Holder of note payable on demand.**—There is nothing whatever in the circumstances of a

**1464 i. Out of usual hours.**—In an action against the indorser of a pltf. must show that it was at a reasonable hour.

Where a was at a & the was that holder went to present it. was in

of any of the of the business carried on at the store, it might be inferred that it was closed in the due course of business, & the presentment was not made at a reasonable time. *Semble*: if no question is at the trial about the hour of

it, & it is proved to have made on the day the note due, it may be presumed made at a proper hour.

**v. TAPLEY** (1839), 4 All.

1 bill

in Glasgow. On the last day of the acceptor shut up his shop at six o'clock p.m., & the bill

carried to the shop about two later, with the view of being presented for payment, but no one being in. It was protested for non-payment. On an issue whether the

what of sh & the of in

himself & the locality where also of butchers generally t appeal the

**NIXSON v. Sc. Jur. 389, 333; 6 Duval.**

#### PART XII. SECT. 2, SUB-SECT. 3.

a. Person without note in possession

about even having it

co. being in process of winding-up, to prevent the holder of a note, payable on demand, from making a demand for its payment, according to the terms of the requirements of the note itself.—**Re EAST OF ENGLAND BANKING Co.** (1868), 4 Ch. App. 14; 38 L. J. Ch. 121; 19 L. T. 209; 17 W. R. 18, L. C. L. J.J.

*Annotations*:—**Held**. **International Contract Co., L. R. 13 Eq.**; **Re Bank of Australia,** 99 L. T. 1 Ch. 578;

#### SUB-SECT. 4.—TO WHOM PRESENTMENT MAY BE MADE.

*See* 1882 Act, s. 45 (3) (6) (7).

**1470. To servant.**—In an action on a note payable 3 months after pltf. should demand same, a demand in writing left by pltf.'s attorney at the house of deft. with his servant is not sufficient.—**NORFOLK (DUKE) v. HOWARD** (1682), 2 Show. 235; 89 E. R. 910.

**1471. To wife—Husband abroad.**—A bill of exchange, payable to deft., or order, was indorsed by deft., to pltf. in Jamaica, where deft., who was master of a ship, then was, but his residence was in England, he having a dwelling-house in London, where his family lived. The bill was presented for acceptance to the drawee, & refused, upon which it was immediately protested, & sent to deft.'s house in London for payment, with notice of its non-acceptance. Deft. was not then in England, but the bill was shown to his wife, from whom payment was demanded, & she was informed of all the circumstances of non-payment, etc.:—**Held**: the demand on the wife was sufficient, & pltf. entitled to a verdict to the amount of the bill.—**CROMWELL v. HYNSON** (1796), 2 Esp. 511, N. P.

**Held**. **Goodman v. Harvey** (1836), 4 Ad. & El.

**1472. To agent—Drawee abroad.**—If a of a bill goes abroad, leaving an agent in with power to accept bills, who accepts this for him, the bill, when due, must be presented to the agent for payment, if the drawee continues absent.—**PHILIPS v. ASTLING** (1809), 2 Taunt. 206; 127 E. R. 1056.

**Murray v. King** (1821), 5 B. & Ald. r. **Wilkins** (1822), 1 B. & C. 10; **Van Wart v.** (1821), 3 B. & C. 439; **Hitchcock v. Humphrey** Man. & G.

—CAN.

A contract a copy of a lost note for & in case of non-payment to indorsers:—**Held**: fulfilled by the note to the place agreed it in the hands of a (1871).

—CAN.

#### PART XII. SECT. 2, SUB-SECT. 4.

a. To represent

In finding that there had a sufficient presentment of the note, as the person who, on the day when it fell due, was at the place where deft. had carried on business, & to whom it was there as

KELLY

44 U. C. IL 578.—CAN.

# BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

for payment: 4, 5,  
6 & 7,

**1473. To executor.]—**In *assumpsit* by indorsee against drawer of a bill of exchange, the declaration, in the usual form, alleged that the bill was duly presented to the acceptor, that it was dishonoured, & that deft. had notice thereof. Deft. pleaded that the bill was not presented to the acceptor, & that deft. had no notice of its dishonour. At the trial, it was proved that the bill was presented, on the day it became due, at the house of the acceptor, & that deft., to whom it was there shown, said that the acceptor was dead, & that he was his exor., adding a request that it might be allowed to stand over for a few days, & he would see it paid. The judge permitted the declaration to be amended, by alleging the death of the acceptor, the appointment of deft. as his exor., the proving of the will, & the presentment of the bill to deft. for payment:—*Held*: the amendment was warranted by (Civil Procedure Act, 1838 (c. 42), s. 23.—*CAUNT v. THOMPSON* (1849), 7 C. B. 400; 6 Dow. & L. 621; 18 L. J. C. P. 125; 12 L. T. O. N. 531; 13 Jur. 495; 137 E. R. 159.

v. Corry, [1898] 1 Q. B.

**1474. To liquidator—Company being wound up.]—**Where a co. is in process of winding-up, the holder of a note, payable on demand, makes a demand for its payment, according to the terms of the requirements of the note itself, the demand is to be made to the liquidator who is winding-up the co.'s affairs.—*Re EAST OF ENGLAND BANKING CO.* (1868), 4 Ch. App. 14; 38 L. J. Ch. 121; 19 L. T. 200; 17 W. R. 18, L. C. & L. J.J.

*Annotations & Menid. Re International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623; *Re Bank of South Australia*, [1895] 1 Ch. 573; *Powell v.* 90 L. T. 284.

## 5.—REFEREE IN CASE OF 2

See 1882 Act, s. 15.

**1475. Presentment after maturity.]—**A bill of was indorsed by the payee to the M. banking co., who indorsed it, & added to their indorsement the following memorandum: "In need, S. P. & Co." After several other blank indorsements, the bill was indorsed in blank to the L. bank, who indorsed it in blank to plff., who it specially, "Pay Terney & Farley, or

order," who indorsed it in blank by writing thereon, "Thomas Terney & Farley." After passing through several other hands, the bill when due was duly presented at S. A. & Co., London, bankers, where it was made payable by the acceptance, & was dishonoured, the answer being "no advice." On the same day it was presented at S. P. & Co.'s, London, bankers, where it was by the memorandum to be paid in case of need. S. P. & Co. refused to pay it, solely on the ground of the irregularity of Terney & Farley's indorsement. The custom of London bankers was admitted to be to refuse all bills, even their own acceptances, where there was a letter wrong in any indorsement. The bill was returned with due notice to plff., who gave due notice of dishonour to the L. bank. At the L. bank the irregularity was then pointed out to plff., who, by their recommendation, sent the bill to Terney & Farley, who lived in Ireland, to rectify the mistake, & the bill, with the proper indorsement on it, was then sent up to London, & again presented at S. P. & Co., who then refused to pay it as being out of time:—*Held*: the L. bank were liable to plff. on the bill.—*LEONARD v. WILSON* (1834), 2 Cr. & M. 589; 4 Tyr. 415; 3 L. J. Ex. 171; 149 E. R. 895.

—*Fold. Walker v. MacDonald* (1848), 2 Exch. 527.

## SUB-SECT. 6.—HOW PRESENTMENT MAY BE MADE.

See 1882 Act, s. 45 (8).

**1476. Posting letter.]—**In an action by indorsee against indorser of a bill of exchange, it was endeavoured to prove, that the indorsee gave notice to the acceptor that he must provide the money before he commenced his action against the indorser, by sending him a letter of it. *Seemle*: the bare sending a letter to the post house was not sufficient evidence of notice, without some further proofs of the acceptor's receiving it, a personal demand generally being expected.—*DALE v. LUBBOCK* (1729), 1 Barn. K. B. 199; 94 E. R. 136.

**1477. —.]—**Where a cheque is drawn upon a country banker:—*Qu.*: whether sending it by post from London to the drawee, with a demand of payment, is a good presentment.—*BAILEY v. DENHAM* (1864), 16 C. B. N. S. 288; 33 L. J. C. P. 5; 10 L. T. 422; 10 Jur. N. S. 821; 12 W. R.

## PART XII. SECT. 2. SUB-SECT. 3.

**d. Whether necessary bill.]—**In an action on a promissory note the demand of payment made by any one without showing the note is sufficient.—*MARCOTTE v. FALANDEAU* (1850), 6 Q. L. R. 296.—*CAN.*

**1478 l. Posting letter—(Continuing t. ill.)**—Deft. sent plff. a cheque, drawn on the K. co., which was deposited by plff. with a bank for collection. The bank sent the cheque by mail to the K. co., who debited the account of deft. with the amount of the cheque. *Seemle*: there was a due presentation of the bill for payment by sending it through the post office.—*CALGARY BREWING & MALTING CO., LTD. v. ROOPE* (1917), 3 W. W. R. 671; *reved.* on other grounds, [1918] 1 W. W. R. 965.—*CAN.*

**l. Formal presentment at locked door.]—**The holder of a note swore

that he went to the maker's store for the purpose of presenting it for payment, but finding the door locked made a formal presentment at the door. The maker of the note swore that he at his store at the time stated, no presentment left to the jury he holder had p & in answer to a question by told them that for the purpose of the suit such presentment would be sufficient, no objection on that ground having been made by deft.:—*Held*: there was no misdirection, & the jury could not have been misled by the answer to their question.—*REED v. KAVANAGH* (1866), 4 All. 437.—*CAN.*

**g. Leaving copy of note with solicitor & making statutory declaration of debt.]—**In an action on a promissory note by payee against administrators of makers:—*Held*: plff.'s leaving a

copy of the note with deft.'s solr. & making a statutory declaration, that the makers' estate was indebted to him upon the note, was not a presentation as required by 1890 Act, s. 45.—*FRASER v. McLEOD* (1895), 3 Terr. L. R. 154.—*CAN.*

**k. At unoccupied place of business.]—**The maker of a note was proved to have occupied an office up to May 1, after which there was no direct evidence of occupation, but his desk remained there as before:—*Held*: in the absence of any proof of his having changed his office, presentment of a note there after May 1 was sufficient.—*KIRKMAN v. GODARD* (1866), 4 All. 558.—*CAN.*

**l. Sufficiency of letter sent to indorser.]—**A letter written by the attorney of the indorsee to the maker, stating that the note, together with other notes, had been placed in his



865; 143 E. R. 1139; *sub nom.* BAYLEY v. BODEN-  
L, 4 New Rep. 110.

*Annotations*.—*Appl.* Heywood v. Pickering (1874), L. R. 9  
Q. B. 428. *Reid.* Pridoux v. Criddle (1889), L. R. 4 Q. B.

1478. Foreign cheque—Banker having no agent  
where payable.]—HEYWOOD v. PICKERING, No. 1449,  
*ante.*

Country cheque.]—See Nos. 1441 *et seq.*, *ante.*

#### SUB-SECT. 7.—AT WHAT PLACE PRESENTMENT MUST BE MADE.

See 1882 Act, ss. 19, 45 (4).

##### A. Bills of Exchange and

##### (a) Place of Payment specified in Bill.

See 1882 Act, s. 45 (4) (a).

1479. To charge acceptor—Not payable there  
only.]—*Held*: words, accompanying an accept-  
ance, "payable at a particular place," or the words  
"accepted, payable at, etc.," were not words  
restricting or qualifying the acceptor's liability,  
but rendering him generally & universally liable,  
& it was not necessary to prove a demand at the  
particular place in an action against such acceptor.  
—SMITH v. DE LA FONTAINE (1785), Holt, N. P.  
366, n.

—*Consd.* Rowe v. Young (1820), Bill. 391.  
*Reid.* Fenton v. Goundry (1811), 13 East.

1480. ———.]—Where an indorser of a bill  
is discharged by laches, & the holder relies upon a  
new promise, he must prove a demand on the  
acceptor; but it is sufficient to demand payment  
at the usual place of residence of the acceptor, &  
if it is not then paid, it is sufficient to entitle the  
party to proceed against the indorser.

If a bill is payable at a certain house, it is  
sufficient to demand the money there; that has  
been done here, for it is the duty of the drawer  
of the bill to leave provision for the payment  
of it (LORD ELLENBOROUGH, C.J.).—BROWN v.  
M'DERMOT (1805), 5 Esp. 265, N. P.

1481. ———.]—If a bill of exchange is  
accepted payable at a particular place, in an action  
against the acceptor, this addition to the accept-  
ance does not require to be noticed in the declara-  
tion, being no part of the contract but merely a

for collection, & requiring him  
be interest, & give new  
security, for the principal:—*Held* not  
a presentment & demand of  
as would, upon notice thereof.

SCOVIL (1844).

#### PART XII. SECT. 2, SUB-SECT. 7. —A (a).

1479 I. To charge acceptor—Not pay-  
able there only.]—When a bill of  
exchange is, in the body of it, made  
payable at a particular specified place,  
it must be presented for payment at  
that place, although accepted generally,  
& in an action against the acceptor,  
such presentment must be averred in  
the declaration, & proved.—ROACHE  
v. JOHNSON (1833), 1 Ir. L. Rep. N. S.  
100; Hayes & Jo. 346; *cond.* Davis  
v. O'Hare & Elliot v. Fidy, *supra*.—  
IR.

1479 II. ———.]—In an action on

a bill of exchange, which required debt.  
to pay to the order of E., at the L. bank,  
429, 3 months after date:—*Held*: the  
declaration was bad, for want of an  
of presentment at the bank.

IR.

1479 III.

a bill of exchange is drawn with  
final note or memorandum, the

at a  
at that particular place  
not be  
L.R.  
IR.

is by a bill of  
of it, at a  
in an  
particular place  
or  
by

(1) I. L. H. 337.—IR.

memorandum, where payment may be demanded.  
—LYON v. SUNDUIS (1808), 1 Camp. 423, N. P.

—*Consd.* Rowe v. Young (1820), 3 Bill.

#### Presentment at clearing house.]

—If a bill of exchange is accepted "payable at  
A. B. & Co.," who are bankers in the City of  
London, a presentment of the bill for payment to  
their clerks at the clearing house is sufficient.—

v. CHETTER (1811), 2 Camp. 596, N. P.

—*Mentd.* Mills v. Barber (1836), 1 M. & W. 425.

1483. ———.]—In a count against the  
acceptor of a bill of exchange, stated to be accepted  
payable at S. & Co.'s, it is sufficient to allege  
generally a request by plff. to debt. to pay the bill,  
without alleging that it was presented for payment  
at the particular place.—FENTON v. GOUNDRY  
(1811), 13 East, 459; 104 E. R. 449.

*Annotations*.—*Distd.* Saunderson v. Bowes (1811), 14 East.  
500. *Expld.* Tidmarsh v. Grover (1813), 1 M. & S. 735.  
*cond.* Gammon v. Schmoll (1814), 1 Marsh. 80; Sebago v.  
Jibol (1816), 4 M. & S. 463; Rowe v. Young (1820),  
Bill. 391. *Reid.* Smith v. De la Fontaine (1785),  
N. P. 366, n.

1484. ———.]—If a bill be accepted, payable  
at a banker's, it must be presented there for pay-  
ment, & the neglect so to present it is a discharge  
to the acceptor.—CALLAGHAN v. AYLETT (1811),  
3 Taunt. 397; 2 Camp. 549; 128 E. R. 158.

*Annotations*.—*M.P.* Fenton v. Goundry (1811), 13 East, 459.  
*Expld.* Gammon v. Schmoll (1814), 1 Marsh. 80. *Consd.*  
Rowe v. Young (1820), 3 Bill. 391.

1485. ———.]—Where the drawer of a bill  
of exchange makes it payable at a particular place,  
this is part of the contract, & must be mentioned  
in describing the bill in the declaration.

Where a bill of exchange is drawn payable in  
London, & it is accepted at a London bankers,  
in an action against the acceptor, a presentment  
for payment there is a material averment, & must  
be proved at the trial.—HODGE v. FILLIS (1813), 8  
Q. B. 463, N. P.

—*Mentd.* Pickin v. Graham (1833), 3 L. J. Ex.

1486. ———.]—If a person, to whom a bill  
is directed generally, accepts it payable at a  
particular place, & the holder consents to receive  
such an acceptance, it interposes in the contract a  
condition precedent that the holder shall present  
the bill to the acceptor for payment at the place  
specified; & in declaring on the bill, plff. must  
aver performance of this, like other conditions  
precedent, by showing a presentment to the

1479 v. ———.]—In an action  
against the acceptor of a bill of ex-  
change made payable, by words in the  
body of it, at a particular place, &  
accepted generally, it is not  
to aver or prove presentment at  
it

Roache v. Johnson, *supra*, *overd.*—  
ELLIOT v. FIRLY (1847), 10 L. L. R.

in  
presented it at all the banks in  
to learn if funds had been provided for  
it, protested it "where payable":—  
*Held*: an objection, that there was no  
place of payment specified in the bill,  
& it ought to have been presented to  
the acceptor personally, or at  
or place of business in

## 236 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Presentment for payment: Sub-sect. 7.*

acceptor at the place specified, & that, whether the action be against the drawer or against the acceptor.—*GAMMON v. SCHMOLL* (1814), 5 Taunt. 314; 1 Marsh. 80; 128 E. R. 722.

*Annotations:—*Consol. *Selwyn v. Abthol* (1816), 4 M. & S. 462; *Howe v. Young* (1820), 2 Brod. & Bing. 165.

**1487.** ——— *Memorandum at foot of bill.*—In an action against the acceptor of a bill of exchange, made payable at a particular place, by a memorandum at the foot of the bill, it is not necessary to prove a presentment, or demand at that place, but the acceptor is generally & universally liable.—*HEAD v. SEWELL* (1816), Holt, N. P. 363, N. P.

*Consol. Rowe v. Young* (1820), 2 Bll. 301.

**1488.** ——— *Where a bill is drawn payable in London, & is accepted payable at a particular banker's in London:—**Semble:* a presentment at that banker's must be proved in an action against the acceptor.—*GARNETT v. WOODCOCK* (1816), 1 Stark. 475, N. P.; *subsequent proceedings* (1817), 6 M. & S. 44.

*Annotations:—*Reid. *Crook v. Jada* (1833), 6 C. & P. 191; *Whitaker v. Bank of England* (1835), 1 Cr. M. & R. 744.

**1489.** ——— *It is a sufficient averment of non-payment of a bill accepted, payable at A.'s, to state that it was presented at that house, without showing it was to him.*—*GILES v. BOURNE* (1817), 6 M. & S. 73; 2 Chit. 300; 105 E. R. 1170.

**1490.** ——— *If a bill of exchange be "accepted payable at the house of P. & Co." it is a qualified acceptance restricting the place of payment, & the holder is bound to present the bill at that house for payment in order to charge the acceptor of the bill; & if he brings an action upon the bill against the acceptor he must in his declaration aver, & on the trial prove, that he made such presentment, & for want of such averment the declaration will be:—**Held:* bad on demurrer.—*ROWE v. YOUNG* (1820), 2 Bll. 301; 2 Brod. & Bing. 165; 4 E. R. 372, H. L.; *revers. S. C. sub nom. YOUNG v. ROWE* (1816), 5 M. & S. 291.

*Annotations:—*Consol. *Rhodes v. Gent* (1821), 5 B. & Ald. 244; *Trescher v. Hinton* (1821), 4 B. & Ald. 413; *Gibb v. 8 Bll. 214. Dist. Re Mayor, Ex p. Whit-*  
*11, 2 Mont. D. & De G. 138. Consol. Skelton v.*  
*21, 11 L. J. Q. B. 331; Saul v. Jones (1858),*  
*E. 59; Smith v. Vertue (1860), 9 C. B. N. S. 214.*  
*v. Halsall (1821), 4 B. & Ald. 197; Re Dil-*  
*Co. (1831), Mont. 27.*  
*1 Bll. 290; Haldane v.*

Where the holder of a bill of exchange accepted payable at a banker's, but not "there only," did not present it for & the banker about three weeks failed, having had in his hands during all that time a balance in favour of the acceptor the amount of the bill:—*Held:* the latter was not discharged by the omission to present the bill for payment, the acceptance being in law a general acceptance.—*TURNER v. HAYDEN* (1825), 4 B. & C. 1; 6 Dow. & Ry. K. B. 5; Ry. & M. 215; 107 E. R. 959.

*The declaration on a bill of exchange it to have been drawn payable to the order of the drawer in London, & accepted at London, according to the usage of & proof of*

for payment in London, or of excuse for non-presentment in London, were unnecessary.

If the bill be drawn payable in London & accepted as drawn, that is a general acceptance, unless the acceptor adds the words provided by the Act [1 & 2 Geo. 4, c. 78] for limiting the acceptance, "& not elsewhere" (*BEST, C.J.*).—*SELBY v. EDEN* (1826), 3 Bing. 611; 11 Moore, C. P. 511; 4 L. J. O. S. C. P. 198; 130 E. R. 649.

*Annotations:—*Consol. *Fayle v. Bird* (1827), 6 B. & C. 531; *Saul v. Jones* (1858), 1 E. & E. 59. *Reid. Gibb v. Mather* (Cr. & J. 254).

**1493.** ——— *In an action against the acceptor of a bill of exchange, in which the drawer, in the body of the bill, has required payment at a particular place, it is not necessary to aver or to prove a presentment at that particular place. Semble:* by the acceptance of such a bill, the acceptor takes upon himself the obligation of going to the place in question & paying. But where the acceptor expressly qualifies his own acceptance, by saying, that he will pay at such a place, & nowhere else, there, the drawer or holder must go to the place of payment, & made the demand.—*FAYLE v. BIRD* (1827), 6 B. & C. 531; 9 Dow. & Ry. K. B. 639; 5 L. J. O. S. K. B. 217; 108 E. R. 547.

*Annotations:—*Reid. *Saul v. Jones* (1858), 28 L. J. Q. B. 37. *Gibb v. Mather* (1832), 2 Cr. & J. 254.

**1494.** ——— *HARTLEY v.* , No. 1507, post.

**1495.** ——— *Pleading.*—To a declaration on a general acceptance of a bill of exchange, deft. pleaded that the acceptance was qualified, & that in the acceptance he expressed that he accepted the bill "payable at a certain place only, to wit, No. 32 Albany Street, that is to say, & not otherwise or elsewhere." Plt. replied that the acceptance was a general acceptance, & that deft. did not in the acceptance express "that he had accepted the bill payable at a certain place only, in manner & form as deft. had alleged":—*Held:* (1) a sufficient traverse; (2) the plea should have alleged that no presentment for payment was made at the place appointed.—*LYON v. WALLS* (1833), 9 Bing. 660; 2 Moo. & S. 736; 2 L. J. C. P. 47; 131 E. R. 762.

—Since 1 & 2 Geo. 4, c. 78, if the drawee of a bill, drawn without special direction as to place of payment, accepts it, payable at a particular place, without any additional words, he undertakes thereby to pay the bill at maturity, when presented at that place, or to himself: if he accepts, payable at such place "& not otherwise or elsewhere," he undertakes to pay it at maturity, if presented at that place, but not otherwise.

If a declaration by indorsee against acceptor of such a bill states that he accepted it "payable at C. & Co., bankers," & that deft. promised to pay it "according to the tenor & effect thereof," it will be understood that the bill is pleaded according to its legal effect; but that does not imply that the bill is made payable at the bankers only, & the declaration need not state a presentment there.—*HALSTED v. SKELTON* (1848), 5 Q. B. 86; 1 Dav. & Mer. 664; 13 L. J. Ex. 177; 2 L. T. O. S. 228; 7 Jur. 680; 114 E. R. 1180, Ex. Ch.

**1497.** ——— *Company in liquidation.*—Where a co. is in process of winding-up, & the holder of a note, payable on demand, makes a



demand for its payment, according to the terms of the requirements of the note itself, the demand is to be made to the liquidator at the place where the note is made payable, & where a claim was so sent in under a winding-up:—*Held*: it was equivalent to a formal demand for payment, & to entitle the holder of the note to interest at 5 per cent., not from the commencement of the winding-up, but from the day when the claim was sent in.—*Re EAST OF ENGLAND BANKING CO.* (1868), 4 Ch. App. 14; 38 L. J. Ch. 121; 19 L. T. 290; 17 W. R. 18, L. C. & L. JJ.

*Annotations*:—*Held*. *Re Bank of South Australia*, [1895] 1 Ch. 578. *Mentd.* *Re International Contract Co., Hughes' Claim* (1872), L. R. 13 Eq. 623; *Powell v. Lee* (1908), L. T.

**1498.** ———.]—In an action by drawer & holder against acceptors of bills of exchange, drawn & accepted in London, "payable at the C. bank, Kandy":—*Held*: (1) the combined effect of 1882 Act, ss. 19 & 54, rendered the acceptor liable to have the bills treated as general acceptances, because he had not brought himself within s. 19 by inserting the words "only & not elsewhere"; (2) the acceptor was bound to pay the holder, & no presentment was necessary.—*Ex p. HAYWARD* (1887), 3 T. L. R. 687, D. C.

**1499.** To charge acceptor for honour—"If protested & refused when due"—Where presentment necessary.]—A foreign bill of exchange was drawn on C. & Co. at Liverpool, payable to A. in London. The drawees having refused to accept, it was accepted by B. in London for the honour of the payee, "if regularly protested, & refused when due." In an action against the acceptor for honour:—*Held*: by the special form of the acceptance, a presentment for payment to the drawee in Liverpool, a refusal by him, & a protest there, were necessary, & the bill was properly presented for payment there on the day it became due.—*MITCHELL v. BAHING* (1829), 10 B. & C. 4; 4 O. & P. 35; L. & Welsb. 41; Mood. & M. 381; 8 L. J. O. S. K. B. 18; 109 E. R. 352.

**1500.** To charge drawer or indorser—Not payable there only.]—If a declaration alleges a bill to be accepted at the house of certain persons at a particular place, it must also aver that the bill was presented for payment at that place, & not to those persons generally.—*AMBROSE v. HORWOOD* (1809), 2 Taunt. 61; 127 E. R. 998.

*Annotations*:—*Held*. *Rowe v. Young* (1820), 2 Brod. & Bing 165. *Mentd.* *Sykes v. Sykes* (1869), 17 W. R. 799.

**1501.** ———.]—If a bill be accepted, payable at a banker's, it must be presented there for payment, & the neglect so to present it is a discharge to the drawer.—*CALLAGHAN v. AYLETT* (1811), 3 Taunt. 397; 2 Camp. 549; 128 E. R. 158.

*Consd.* *Fenton v. Goundry* (1811), 13 East. *Gammon v. Schmoll* (1814), 1 Marsh. *Rowe v. Young* (1820), 2 Bll. 391.

**1502.** ———.]—*GAMMON v. SCHMOLL*,

**1503.** ———.]—In *assumpsit* by indorsee against indorser of a bill of exchange, plff. declared that A. accepted, & by that acceptance appointed the money in the bill specified to be paid at the of G. & Co., & averred that the bill was in

due manner presented to G. & Co. & to A. for payment, & that G. & Co. & A. were then & there required to pay same to plff. according to the tenor & effect of the bill, & acceptance & indorsement. Upon special demurrer for cause, that it did not appear that the bill was presented at the house:—*Held*: the averment was sufficient.—*BUSH v. KINNEAR* (1817), 6 M. & S. 210; 105 E. R. 1221.

**1504.** ———.]—In an action by indorsee against drawer of a bill of exchange, plff. averred, in his declaration, that the bill was accepted by J., payable at S. & Co.'s, & that when it became due, it was duly presented there for payment, but, that neither S. nor J. would pay same, but wholly refused so to do. On special demurrer, assigning for causes, that it did not appear in the declaration, that the words, "not elsewhere," were contained in the acceptance, & that due presentment of the bill to J. should have been alleged:—*Held*: the declaration was sufficient, as the holder of a bill accepted & made payable at a banker's, was only bound to present it there, & not seek the acceptor elsewhere.—*DE BERGARECHE v. PILLIN* (1826), 3 Bing. 476; 11 Moore, C. P. 350; 4 L. J. O. S. C. P. 146; 130 E. R. 597.

**1505.** ———. Death of acceptor before bill due.]—If a bill is accepted payable at a particular place, & the acceptor dies before it becomes due, it is sufficient, in an action against the drawer, to prove presentment at the specified place, & it is not necessary to show presentment at the house of deceased's representative.—*PHILPOTT v. BRYANT* (1827), 3 C. & P. 244, N. P.; *subsequent proceedings* (1828), 4 Bing. 717.

*Mentd.* *Oriental Financial Corpn. v. Overend*, 871), 7 Ch. App. 145, n.

**1506.** ———.]—Declaration on a bill of exchange made payable by the acceptor at the house of S., P., & S.:—*Held*: averment of presentment at the house of S., P., & S. was sufficient, & it was not necessary to aver presentment to the acceptor or to S., P., & S.—*HAWKEY v. BORWICK* (1827), 4 Bing. 135; 1 Y. & J. 370; 12 Moore, C. P. 478; 130 E. R. 719, Ex. Ch.

**1507.** ———.]—Although a bill of exchange, accepted "payable at," etc., is a general acceptance, & does not compel the holder, in an action against the acceptor, to prove presentment at the place expressed, yet presentment at that place is a good presentment to the acceptor for the purpose of an action against the drawer.—*HARTLEY v. SPITTAL* (1828), 7 L. J. O. S. K. B.

—Where a bill is by the acceptor made payable at a particular place, which is not his residence, proof of presentment at that place is not sufficient evidence of dishonour in an action against the drawer, without proof of the acceptor's handwriting.—*SEDGWICK v.*

5 C. & P. 199, N. P.

**1509.** ———.]—Where a bill of exchange, drawn with the words "pay to my order in London," in the body of the bill, & directed to the "payable in London," was accepted at & Co., bankers, London:—*Held*: a pre- at J., L. & Co.'s was necessary to charge

at or bill the drawer, or to the person who took of act (1839), bill to sue on

## 238 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Presentment for*

*Sub-sect. 7, A,*

the drawer, & the circumstance of the drawee having negotiated it after such acceptance made no difference.—*GIBB v. MATHER* (1832), 2 Cr. & J. 254; 8 Bing. 214; 1 Moo. & N. 387; 2 Tyr. 189; 1 L. J. Ex. 87; 149 E. R. 110, Ex. Ch.

—*Consd.* *Parkes v. Edge* (1833), 3 Tyr. 364; *Skilton* (1843), 2 L. T. O. S. 228. *Reid.* *v. Bowman* (1843), 4 Scott. N. R. 617; *Haul v. Jones* (1844), 1 E. & E. 59. *Mentd.* *Shelton v. M. & W.*

1510. ———.]—In a declaration by indorsee against indorser of a bill, it is not necessary to allege a special acceptance at a particular place, or a presentment at such place. It is sufficient to state a general presentment to the drawee, without stating any acceptance, & to prove the presentment at the particular place pointed out by the acceptance.—*PARKES v. EDGE* (1833), 1 Cr. & M. 429; 3 Tyr. 364; 2 L. J. Ex. 94; 149 E. R. 466; *nom.* *PARKER v. ADE*, 1 Dowl. 643.

*Annotations:—Mentd.* *Pullen v. Heaven* (1838), 2 Gale, Wilkin v. Reed (1854), 15 C. B. 192.

1511. ———. **Presentment at clearing house.]**

In an action by indorsee against drawer of a bill accepted by T. & G. at London bankers, the declaration did not state the acceptance at all, but stated that it was presented to T. & G., the

for payment, & that they refused to pay. proof was presentment of the bill at maturity at the clearing house to the clerk of the London bankers named in the acceptance.—*Held*: as the did not state the acceptance, the it at the place fixed by the acceptors sufficiently proved, & the London bankers for that purpose to the acceptors.

*v. PACKER* (1833), 3 Tyr. 370, n.

*In t*

at a particular place, an averment in a tion against the drawer or indorser, stating presentment generally, seems to be sufficient after verdict.—*LYON v. HOLT* (1839), 5 M. & W. 250; 2 Horn. & H. 41; 151 E. R. 107.

303; *Oriental Financial Corpn. v.* 21 L. T. 774.

1513. ———.]—A declaration by indorsee drawer of a bill of exchange, accepted at the Bloomsbury branch of the L. bank, that the bill was presented "at the Bloomsbury branch of the bank on the day when it became due." Deft. having sued out a writ of error, on the ground that the declaration did not

to the acceptor, to issue execution notwithstanding the writ of error. Deft. having thereupon abandoned the writ of error, the ct. afterwards to give plffs. the costs of the

(1841), 8 M. & W. 252; 11 L. J. Ex. 64; 5 Jur. 1200; 151 E. R. 1031; *sub nom.* *SKELTON v. BRAITHWAITE*, 1 Dowl. N. S. 354.

*King v. Bickley* (1842), 6 Jur.

1514. ———.]—An allegation of to the drawee of a bill is proved by evidence of presentment at the place at which, by the acceptance, it is made payable.—*WILNOT v. WILLIAMS* (1844), 7 Man. & G. 1017; 8 Scott. N. R. 713; 14 L. J. C. P. 33; 4 E. R. 413.

1515. ———.]—A bill of exchange drawn up by W. upon J. was accepted by the latter, payable at plff.'s bank, & the bill was subsequently indorsed by W. to plffs. On the day when it became due there were no assets of J.'s in the bank. In an action by plffs. as indorsees against the indorser:—*Held*: it was not necessary to show a presentment of the bill to the acceptor.—*BAILEY v. PORTER* (1845), 14 M. & W. 44; 14 L. J. Ex. 244; 153 E. R. 382.

*Annotations:—Appld.* *Paul v. Joel* (1858), 3 H. & N. 455. *Paul v. Joel* (1859), 4 H. & N. 355. *Apprvd.* *Bain v.* (1866), 14 W. R. 845. *Reid.* *Allen v. Edmundson* 3 Exch. 719; *Everard v. Watson* (1853), 22 J. Q. B. 222. *Mentd.* *Armstrong v. Christiani* (1848), C. B. 687; *Maxwell v. Brain* (1864), 10 L. T.

1516. ———.]—In a count by indorsee against drawer of a bill of exchange drawn payable in London, the venue being laid in London:—*Held*: a general allegation of presentment was a sufficient allegation of a presentment in London.—*BOYDELL v. HARKNESS* (1846), 3 C. B. 168; 4 Dow. & L. 178; 15 L. J. C. P. 233; 7 L. T. O. S. 206; 10 Jur. 479; 136 E. R. 68.

*Annotations:—Mentd.* *Chappell v. Davidson* (1856), 18 C. B. 194; *Richardson v. Locklin* (1865), 6 B. & S. 777.

1517. ———.]—A bill was drawn by G. on H., H.'s name in the address being followed by the mention of a particular place. H. accepted payable at another place named in the acceptance, not adding "only" nor "not otherwise or elsewhere." G. indorsed to deft., who indorsed to plff. Plff., at maturity, presented the bill at the place named in the address, but not at the place named in the acceptance:—*Held*: he could not sue deft. on the bill, the presentment being insufficient, 1 & 2 Geo. 4, c. 78, putting an end to the necessity of presentment at the place named in the acceptance as against the acceptor only.—*SAUL v. JONES* (1858), 1 E. & E. 59; 28 L. J. Q. B. 37; 32 L. T. O. S. 90; 5 Jur. N. S. 220; 7 W. R. 47; 120 E. R. 829.

—*Reid.* *Wirth v. Austin* (1875), L. R. 10 C.

1518. ———.]—An action was brought against indorsers of a bill of exchange for £60, drawn by W. upon & accepted by L., payable 7 months after date & indorsed by defts. to plff. The bill, which was payable at defts.' office at Swansea, became due on Feb. 8, 1895. Instead of being presented at Swansea, the bill was presented to the acceptor personally at Newport:—*Held*: as the action was an action between indorsee & indorser, 1882 Act, s. 45 discharged defts., unless plff. could prove presentment on the day the bill fell due at Swansea.—*HEIRNSTEIN v. USHER & Co.* (1895), 11 T. L. R. 856.

1519. ———. **Place of payment** ment there by holder.]—Where the holder of a bill of exchange duly presents it for payment at the place named in a special acceptance, which was on the bill when indorsed to him, but which turns out to be a forgery, a previous party to the bill is not bound by such presentment, unless it be shown that the acceptance was on the bill when indorsed by him. There is no presumption as against him that such was the case.

After a bill of exchange, to which a forged special acceptance had been added, had been duly presented for payment at the place named in the acceptance, & dishonoured, deft., who had drawn & indorsed the bill, admitted that the his:—*Held*: no admission of his



or of the sufficiency as against him of the presentment.—*WETTON v. HODD* (1854), 23 L. T. O. S. 79; 18 Jur. 630; 2 W. R. 423; *sub nom.* *WETTON v. HODD*, 2 C. L. R. 848.

**1520. To charge transferor.]**—If a bill is drawn payable at the house of a third person, a refusal by such person is good evidence of the non-payment of such bill or note, though he is no party to it. *STEDMAN v. GOOCH* (1793), 1 Esp. 3, N. P.

*Annotations:—Mentd.* *Dutton v. Solomonson* (1803), 3 Bos. & P. 582; *Hickling v. Hardey* (1817), 1 Moore, C. P. 61; *Maillard v. Argyll* (1843), 6 Man. & G. 40; *Price v. Price* (1847), 16 M. & W. 232; *Nicholl v. Thomas* (1850), 2 Rob. Ecol. 157; *Belshaw v. Bush* (1851), 11 C. B. 191; *Re London, Birmingham & South Staffordshire Banking Co.* (1865), 34 Beav. 332.

**Banker's note payable at two places.]**

—Where a banker's promissory note is made payable at T., & likewise at London, the holder has a right to present it at either place, & if payment be refused in London, it is no defence on the part of those who contend that the holder has been guilty of laches, to prove, that if payment had been demanded at T., which was the more convenient, & nearer place, the bill would have been paid.—*BEECHING v. GOWER* (1818), Holt, N. P. 313, N. P.

*Annotations:—Consd.* *Camidge v. Allenby* (1827), 6 B. & C. 373; *Firth v. Brooks* (1861), 4 L. T. 467; *Bailey v. Bodenham* (1864), 16 C. B. N. S. 288.

**1522. Cheque—Address of London agent on country cheque.]**—The mention of the names & address of the London agents in a memorandum at the foot of a country banker's cheque, does not make the cheque payable at the place so indicated.—*BAILEY v. BODENHAM* (1864), 16 C. B. N. S. 288; 33 L. J. C. P. 252; 10 L. T. 422; 10 Jur. N. S. 821; 12 W. R. 805; 143 E. R. 1139; *sub nom.* *BAYLEY v. BODENHAM*, 4 New Rep. 110.

*ons:—Raid.* *Prideaux v. Criddle* (1869), L. R. 4 Q. B. *Mentd.* *Heywood v. Pickering* (1874), L. R. 9 Q. B.

(b) No of Payment specified but Address given in Bill.

See 1882 Act, s. 45 (4)

**1523. To charge acceptor.]**—A holder of a bill carried it, when due, to the residence of the acceptor stated in the bill, found the house closed, & inquired for the acceptor in the neighbourhood, but could not hear of him:—*Held*: the bill was dishonoured.—*HINE v. ALLKLY* (1833), 4 B. & Ad. 624; 1 Nev. & M. K. B. 433; 2 L. J. K. B. 105; 110 E. R. 591.

*Buxton v. Jones* (1840), 1 Man. & G. r. *Clarke* (1849), 6 C. B. 751.

**1524. To charge indorser.]**—A bill of exchange was presented for payment at the door of the house where the drawee was described as living, to a lodger who was coming from the passage of the into the street. The drawee had removed to

another residence, known to the occupier of the house, but not to the lodger, & it was not shown that he had left funds for payment:—*Held*: the presentment was sufficient to maintain the affirmative of an issue raised on the due presentment of the bill, in an action against an indorser.—*BUXTON v. JONES* (1840), 1 Man. & G. 83; 133 E. R. 256; *sub nom.* *BUCKSTONE v. JONES*, 1 Scott, N. R. 19; 9 L. J. C. P. 257.

(c) No of Payment and No

See 1882 Act, s. 45 (4) (c) (d); cases *infra*.

(d) No Person at Proper Place authorised to pay Bill.

See 1882 Act, s. 45 (5).

**1525. To charge transferor.]**—*STEDMAN v. GOOCH*, No. 1520, *ante*.

**1526. To charge acceptor.]**—*HINE v. ALLKLY* No. 1523, *ante*.

**1527. To charge indorser.]**—*BUXTON v. JONES*, No. 1524, *ante*.

**1528. Whether production of bill necessary.]**—Action by indorsee against drawer of a bill of exchange, accepted payable at R.'s. Plea, that the bill was not duly presented. The evidence was, that a witness duly took the bill for presentment to R.'s, & inquired for the acceptor, who was not there; he then inquired of R. whether he had authority to pay the bill. R. refused to tell

he would produce the bill, which to do. Plff. contended that he was to a verdict, on the ground that it was to produce the bill, as the acceptor was not there:—*Held*: he was not so entitled.—*v. HUTCHINSON* (1813), 2 L. T. O. S. 120.

*R. Promissory Notes.*

See 1882 Act, s. 87.

(a) To charge Maker.

**1529. Payable at particular place—"In body of it"—What is.]**—Across the face of a promissory note, the maker wrote & signed the following words: "Payable at the L. bank, W.";—*Held*: the note was not "in the body of it" made at a particular place within 1882 Act, s. 87 (1). *STEVENSON v. BROWN* (1902), 18 T. L. R. 28 *sub nom.* *STEVENSON v. CHILDS & BROWN*, 40 Sol. Jo. 282.

**1530. ——— Whether presentment necessary.]**—In an action against the maker of a promissory note, expressed to be payable at a particular place, there is no necessity for proving that

PART XII. SECT. 2. SUB-SECT.

—A (a).

m. How presentment at proper place pleaded.]—An allegation in a statement of claim that a cheque "was duly presented for payment" is good, provided there is nothing on the face of the cheque requiring presentation at a particular place.—*KATTE NACHOD v. STERN* (1897), 30 N. S. R. 261.—CAN.

XII. SECT. 2. SUB-SECT. 7.

—B (a).

A note made in in Glasgow, not or elsewhere "

Canada, pa " = not c (1855).

305.—CAN. 1890 II. —

the maker, no demand has at a

of —There is of

2.—*Presentment for payment: Sub-secl. 7,*

it was presented there for payment.—NICHOLLS v. BOWES (1810), 2 Camp. 498, N. P.

**Annotation:—***Reid*, *Rowe v. Young* (1820), 2 Bll. 391.

**1531.** ——— ——— ———.—A promissory note of left.'s, promising to pay so much at their banking house at W., requires a demand of payment there, in order to give the holder a cause of action, if it be not paid.—**SAUNDERSON v. BOWES** (1811), 14 East, 500; 104 E. R. 693.

**Annotations:**—**Conrad**, *Butterworth v. Le Despencer* (1814), 3 M. & S. 150; *Howe v. Young* (1820), 2 Bl. 391. **Reid**, *Gibb v. Mather* (1832), 8 Blig. 214.

**1532.** ———— .]—Payment of a promissory note made payable at a certain place named in it must be demanded there before the makers can be sued on it.—*DICKINSON v. BOWES* (1812), 16 East, 110; 104 E. R. 1030.

such specified place, & of neglect or refusal there to pay the amount of such note. — O'BRIEN v. STEVENSON (1865), 15 L. C. R. 205. — CAN.

**1530 Ill.** In an action by payee against maker, a promissory note is admissible in evidence under the common money counts, although it is in the body of it made payable at a particular place, but the right of recovery is suspended until presentment be made at the place, on or after the time of payment. **MERRITT v. BER.** 409.—**CAN.**

1.—Where a person made a note *en brevet*, payable at his domicile: *Held*: the creditor was bound to make demand of payment at the place specified.—**DORION v. BEVOIT** (1878), 1 L. N. 350; 2 L. N. 171. **CAN.**

1830 v. . . . . } Where a  
payable at a  
entiment for pay-  
must be made at that place.--  
ROBT. C. HAMILIN (1893), 2 B. C. R.  
183. CAN.

**1530** vi. ... - A note  
at a particular place need not  
at the place named before  
can be maintained on it, but  
no costs can be  
in an action against the

7 E. L. R. 928. CAN.

1830 will  
every note was drawn, payable to the  
order of plff., at the U. bank :— *Held* :  
the note must be presented at the place  
indicated in the body of it in order to  
—WARNER & C.

N. A. R. 340 - CAN.

to ... y note, "to  
at H.,  
the was one

at that place must  
to enable plaintiff  
C. SYMON-K...  
A T T N. N. R. 544. -CAN.

note is made at a  
no  
against

MANUALS  
D. L. R.

1830 N. - Where a  
is payable at a particular place,  
tment for payment at any other  
will not be a valid presentment.  
-JAMES F. L'HONOREUX (1914), 27  
L. B. 21. -CAN.

**Next.**

**Reid.** Rowe v. Young (1820), 2 Bl. 301.  
v. Brewer (1823), 7 Moore, C. P. 522.

**1533.** ——— ——— ———.]—A note, promising to pay on demand at a particular place, must be presented, & a demand of payment made, at that place, unless the makers discharge the holder from the presentment & demand, & the presentment & demand must be alleged, unless a discharge is shown.—*BOWES v. HOWE* (1813), 5 Taunt. 30; 128 E. R. 596, Ex. Ch.; *reversq.* S. C. *sub nom.* *HOWE v. BOWES* (1812), 16 East, 112.

*Annotations*.—**Consd.** *Rowe v. Young* (1820), 2 BH. 391; *Turner v. Stones* (1843), 1 Dow. & L. 122; *Sands v. Clarke* (1849), 8 C. B. 751. **Reid.** *Crosse v. Smith* (1813), 1 M. & S. 545; *Re Agra Bank, Ex p. Tondeur* (1867), L. R. 5 Eq. 160; *Re East of England Banking Co.* (1868), L. R. 6 Eq. 368.

1534. ——— ——— ———.]—A declaration against the maker of a promissory note, payable at a particular place, averred a presentment at the

ment at the place specified for payment in the body of the note is not necessary before action can be brought against the maker.—CANADIAN BANK OF COMMERCE v. BRILLAMY (1915), 33 W. L. R. 8; 0 W. W. R. 589; 25 D. L. R. 133; 8 Sask. L. R. 381.—CAN.

**1880 xii.** ———— .)—Want of presentment of a note where payable is not a defence in an action against the maker, & pltf. will not be deprived of his cause, unless funds were deposited at the place of payment to meet the notes.—**ANDERSON v. HIESTED (1916), 34 W. L. R. 474; 10 W. W. R. 636.—CAN.**

1530 xiii. (— — — — —.)—In an action on two promissory notes, one of which was not presented or protested:—*Held*: non-presentation was no answer to an action against the maker. —**SPARKS v. CONMEE** (1919), 16 O. W. N. 10.—**CAN.**

1530 xlv. -----P'  
 6.)—(On a note payable at a place, without the words " & not elsewhere," it is sufficient to present it either at the place named, or to the maker himself.—COMMERCIAL BANK v. JOHNSTON (1845), 2 U. C. R. CAN.

1830 xv. a note made payable at the residence of D., at S., "only & not otherwise or elsewhere," did not require any special form of presentment, it being proved to have been on the day it matured at that place with D.—HARRIS v. —, 8 C. P. 407.—CAN.

A promissory note drawn on  
1, where both the maker & payee  
J. was made payable "at any  
bank":—*Held*: that meant any bank  
in Boston.—BALDWIN c. HITCHCOCK  
1 Han. 319.—CAN.

1830 xvil. \_\_\_\_\_.]  
Promissory notes were made payable at  
the I. bank without stating any special  
place. The notes were dated at  
Brandon. The head office of the bank  
at Toronto, but it had a branch  
at Brandon, & the notes were pr  
at that office for payment :  
a sufficient presentment.—  
BANK v. BISSETT (1891),  
7 Man L. R. \_\_\_\_\_]

... a note is made payable by A. at a bank, a plea denying presentment to A. is good, as it properly raises an issue as to whether the note was  
 --BANK OF UTAH

CANADA v. SHERWOOD (1851), 8 U. C. R.  
116.—CAN.

**1530 xix.** *Proof.]*—In an action to recover the amount of promissory notes, payable at a bank to the manager, the manager's possession of the notes is sufficient, & actual presentation at the bank need not be proved, although it has been averred in the declaration.—*FITZSIMON v. SMITH* (1841), 1 Leg. Rep. 271.—*IR.*

**1530 xx.** ——— *Payable at alternative places.*—Where a promissory note was payable at B., or, failing that, at a place in India:—*Held:* before provisional sentence could be obtained on the note, presentation must be made at both places of payment.—**r. NAIDOO (1910), 10 H. C. S. AF.**

1530 xxi. ----- *Maker having absconded.*)—The maker of a promissory note, who was a merchant residing & carrying on business in S., having, before the note became due, closed his store & absconded;—*Held*: presentment at his late dwelling-house was sufficient without proof of presentment at the store, or that the store remained closed on the day the note fell due.—  
INSON v. TAYLOR (1843), 2 Kerr, --CAN.

1830xvii.  
In an action on a note, the declaration must aver presentment where it is payable.—FERRIE v. RYKMAN (1830), Bra. 64.—CAN.

**1830 xiii.** —————. ]—In an action against the maker of a promissory note "payable 30 days after date at the H. banking Co.'s office, Truro," *pltf.* omitted to allege presentment:—*Held:* the note being made payable at a particular place, it was as necessary to allege presentment as it was to prove it.—**PICKON v. MOORE** (1891), 23 N. S. R. 246.—**CAN.**

Although a promissory note is payable at a particular place, it is not necessary, in an action upon it in a county ct., to allege presentment at that place in the particulars of claim, or to prove presentment at the trial, unless deft., the maker, has expressly set up non-presentment in his dispute note.—**FRAGUE v. SCOLAR** (1905), 8 W. L. R. 199; 17 Man. L. R. 593.—**CAN.**

p. ——— When due presumed.  
 ——— If a note be at the  
 place of payment at the time it becomes  
 due, it is sufficiently presented.—  
 MERCHANTS BANK v. M.  
 6 Mar. L. R. 467.—CAN.



place, & that debt. *licet scipius requisitus* had hitherto refused, & still did refuse to pay:—*Held*: good upon demurrer, & a refusal at the particular place need not be averred.—*BUTTERWORTH v. LE DESPENCER* (LORD) (1814), 3 M. & S. 150; 105 E. R. 567.

1535. — — — — —.]—A count on a promissory note made payable at a particular place, named in the body of the note, is bad after verdict, if it omits to allege a presentment at that place.—*EMRLIN v. DARTNELL* (1844), 12 M. & W. 830; 1 Dow. & L. 1010; 13 L. J. Ex. 255; 3 L. T. O. S. 105; 152 E. R. 1435.

*Annotations*:—*Moss v. Berkovitz* (1846), 16 L. J. Ex. 278; *M'Dowall v. Moss* (1848), 17 L. J. Q. B. 295; *Bottomley v. Nuttall* (1858), 5 C. B. N. S. 192.

1536. — — — — —.]—A declaration, alleged that debt. made his promissory note, & thereby promised to pay to pltf., by name & addition of Miss J. H., at 10, Duncan Street, Edinburgh, the sum of, etc. Averment, that pltf., when & since the sum became due & payable, was always ready & willing to receive the sum according to the tenor & effect of the note, of which debt. had notice, yet, etc.:—*Held*: the note was one payable at a particular place, & the declaration was bad for want of an averment of presentment for payment there.—*SPINDLER v. GREILETT* (1847), 1 Exch. 384; 5 Dow. & L. 191; 17 L. J. Ex. 6; 154 E. R. 163; *sub nom.* SPENDLER v. GILLET, 10 L. T. O. S. 137.

1537. — — — — —.]—A promissory note which, in the body of it, is made "payable on, etc. At etc." must, by the law of England, be presented at the place mentioned, although there is a full stop between the date & the place of payment, & the statement of the place cannot be taken as a mere memorandum.—*VANDER DONCKT v. THELUSSON* (1849), 8 C. B. 812; 19 L. J. C. P. 12; 137 E. R. 727.

*Annotations*:—*Mentd. R. v. Povey* (1852), 16 J. P. 745; *Rowley v. L. & N. W. Ry. Co.* (1873), 42 L. J. Ex.

1538. — — — — —.]—Where debt.'s notes were made payable at a particular place, but the agent of pltf.s. presented the first of the notes at maturity at a wrong place, & debts. were always ready & willing to pay the amount of the notes, & had funds to enable them to do so:—*Held*: there had been no substantial default by debts., & pltf.s. could not recover.—*RANDALL, SAUNDERS & Co. v. THORN & Co.*, [1878] W. N. 150, C. A.

1539. — — — — —.]—Where a promissory note is made payable at a particular place, presentment for payment at that place is, under 1882 Act, s. 87, necessary in order to render the maker of the note liable, although such place of presentment may have been inserted merely for the

q. — — — — —.]—*Held*: as it was proved that the notes were in pltf.'s office, where they were made payable at the time they became due, no other proof of presentation was required.—*WALLACE v. SOUTHER*, 9 C. L. T. 219.—CAN.

s. — — — — —.]—In an action on a promissory note:—*Held*: unless the note was presented for payment the maker was not liable upon it, but there being no evidence that the note was not presented for payment at the bank to which it was payable, which was the same bank to which it had been indorsed, it might be assumed that the

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note was there when it fell due, ready for delivery to the maker upon payment, & that would constitute a sufficient presentment.—*JOHNSON v. L'HOUVEUX* (1914), 37 W. L. R. 31.—CAN.

1541. — — — — —.]—*Not "in body of it"—Whether presentment necessary.*—Where at the foot of a promissory note it was made payable at a particular place:—*Held*: presentation was unnecessary.—*HARVEY & Co., Ltd. v. DAUGHERTY* (1914), T. P. D. 665.—S. AF.

t. — — — — —.]—Place of indorsement.—On

purpose of giving jurisdiction to a particular ct.—*JOSOLYNE v. ROBERTS*, [1908] 2 K. B. 349; 77 L. J. K. B. 845; 99 L. T. 282, D. C.

1540. — — — — —.]—Presentment to banker in absence of maker.]—A promissory note was made payable at G.:—*Held*: a presentment at a banker's at G., the maker being absent from G. when the note became due, was sufficient evidence of a presentment to the maker at G., as alleged in the declaration.—*HARDY v. WOODROOFE* (1818), 2 Stark. 319.

*Annotation*:—*Reid. Hine v. Alley* (1833), 4 B. & Ad. 624.

1541. — — — — —.]—*Not "in body of it"—Whether presentment necessary.*—If a promissory note is made payable at a particular place, in an action against the maker, there is no necessity for proving that it was presented there for payment.—*WILD v. RENNARDS* (1809), cited 1 Camp. at p. 425, n.

*Annotation*:—*Reid. Rowe v. Young* (1820), 2 Bll.

1542. — — — — —.]—If a place of payment is mentioned in the margin, or at the foot, of a promissory note, this is no part of the contract, but a mere memorandum; & in an action on the note, there is no occasion to prove that it was presented there for payment.—*PRICE v. MITCHELL* (1815), 4 Camp. 200, N. P.

*Reid. Richards v. Millington* (1816), Holt, N. P. 364, n.; *Rowe v. Young* (1820), 2 Bll. 391.

— — — — —.]—A promissory note was in the common form, but in the margin, & underneath the name of the maker, was written: "payable at B. & Co.'s." In an action by indorsee against maker, the declaration did not state that the note had been presented at B. & Co.'s, & no evidence of that fact was tendered by pltf.:—*Held*: as the words "payable at B. & Co.'s" were not introduced in the body of the bill, but were only inserted in the margin, they were a mere memorandum, not coupled with, nor qualifying, the promise, & the promissory note was perfect without it.—*RICHARDS v. (LORD)* (1816), Holt, N. P. 364, n., N. P.

*Annotation*:—*Distd. Rowe v. Young* (1820), 2 Brod. &

1544. — — — — —.]—Place printed same time as note.]—The whole of a promissory note being printed, except the names, dates, & sum, & a place of payment inserted at the bottom of the note being also printed, a special presentment there is necessary.—*TRECOTHICK v. EDWIN* (1816), 1 Stark. 468.

*Annotation*:—*Consd. Masters v. Baretto* (1849), 8 C. B. 433.

1545. — — — — —.]—By a memorandum at the foot of a promissory note, it was made payable at a particular place:—*Held*: this was part of the contract, & it was not variance to allege the note

default of drawer.]—The contract that the indorser of a *hundi* enters into is to pay the amount to the holder, in case the drawee makes default, in the place of indorsement & not in the place where it is made payable.—*SHIVDAS v. MULCHAN* (1875), 18 Bom. 113.—IND.

w. — — — — —.]—of payment to exist — — — — —.]—Whether presentment the place at which a promissory note is payable ceases to exist, personal presentment must be made.—*McROBBIE v. TORRANCE* (1888), 5 Man. L. R. 114.—CAN.

## 242 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 2.—Presentment for payment: Sub-sect. 7, B.**  
(a), (b) & (c); sub-sects. 8 & 9.]

to be so payable.—*SPROULE v. LEGGE* (1822), 1 B. & C. 16; 3 Stark. 156.

**1546.** ———. ———.]—Where, by a memorandum at the foot of a promissory note, it was made payable at a particular place:—*Held*: this did not constitute a part of the contract, so as to make it necessary for a party suing on the note to aver & prove a presentment there.—*WILLIAMS v. WARING* (1829), 10 B. & C. 2; 5 Man. & Ry. K. B. 9; L. & Welsb. 48; 8 L. J. O. S. K. B. 7; 109 E. R. 351.

*Annotation*:—*Reid. Stevenson v. Brown* (1902), 18 T. L. R. 268.

**1547.** ———. ———.]—A promissory note was in the following form: "Six months after date I promise to pay £500, A. or order, the sum of £500 value received. C. B. Payable at 14, Stratford Place, London":—*Held*: the words after the signature were no part of the note.—*PADWICK v. BALDWIN* (1848), 10 L. T. O. S. 325.

**1548.** ———. ———.]—The words "payable at," etc., written beneath the body of a promissory note, constitute a memorandum only, & do not form part of the contract.—*MASTERS v. BARETTO* (1849), 8 C. B. 433; 19 L. J. C. P. 50; 14 L. T. O. S. 153; 13 Jur. 1124; 137 E. R. 578.

**1549.** ———. ———.]—Where an indorsee declared against the maker of a promissory note, that he made same payable at the house of B. & Co., London, & upon production of the note at the trial it appeared that the address at the house of B. & Co. was not part of the note, but only a memorandum at the foot of the note:—*Held*: that was a variance.

Pltf. has misdescribed the note as payable at a particular place, which it is not, the address being no part of the contract, but a memorandum (LORD ELLENBOROUGH, C.J.).—*EXON v. RUSSELL* (1816), 4 M. & S. 505; 105 E. R. 921.

*Annotations*:—*Consd. Williams v. Waring* (1829), 10 B. & C. 2. *Distd. Warrington v. Early* (1853), 2 E. & B. 763. *Reid. Stevenson v. Brown* (1902), 18 T. L. R. 268.

**1550.** ———. ———.]—Where the maker of a promissory note, by a note at the foot, makes it payable at a particular place, an allegation, after stating the promise to pay in the usual manner, that deft. then & there made the note payable at the particular place, does not amount to a misdescription of the note.—*HARDY v. WOODROOPE* (1818), 2 Stark. 319.

*Annotation*:—*Reid. Hine v. Allely* (1833), 4 B. & Ad.

### To charge

**1551. Payable at particular place—"In body of it"**—Whether presentment to maker necessary.]—If a promissory note is made payable at a particular

no place of payment is  
in the body, or by way of  
on any of

is not

in order

Co.

### PART XII. SECT. 2, SUB-SECT. 7.

1551

"In

to maker

it

at

—A promissory note made payable at a branch office of a banking corp'n. must be actually presented there, to save the liability of the indorser.—*CITY BANK v. AUSTRALIAN JOINT STOCK BANK* (1870), 9 N. S. W. S. C. R. AUS.

**1551 II.** ———. ———.]—even for the purpose of evidence, it not necessary, in order to charge the indorser, to show presentment at the place.—*BANK OF UPPER v. PARSONS* (1847), 3 U. C. R.

**1551 III.** ———. ———.] In action by indorsee against

place, it is a fatal variance to omit to state this in declaring on the note in an action by indorsee against indorser.—*ROCHE v. CAMPBELL* (1812), 3 Camp. 247, N. P.

*Annotations*:—*Appld. Rowe v. Young* (1820), 2 Bli. 391. *Consd. Gibb v. Mather* (1832), 8 Bing. 214.

**1552.** ———. ———.]—**Joint & several note—Presentment at house of either maker.**—*Assumpsit* against indorser of a joint & several promissory note made by C. & H. for £60, indorsed by deft., & subsequently by S. Plea, no presentment for payment. A witness for pltf. deposed to having discounted the bill for S. before it became due, & subsequently indorsed it to pltf., & that he, the witness, had presented same for pltf. the day it became due, at a house which he believed to be the joint place of business of both C. & H., whose names appeared over the door:—*Held*: the presentment for payment at the house of C. was a good presentment, although C. & H. were not partners in trade.—*LINDUS v. CORBETT* (1844), 2 L. T. O. S. 377, N. P.

**1553.** ———. ———.]—**By memorandum only—Whether presentment to maker necessary.**—If a note be made payable at a particular house, a demand of payment at that house is as a demand on the maker.

A. made a promissory note payable to B. or order, with a memorandum upon it that it would be paid at the house of C., A.'s banker. In the course of business the note was indorsed to C. In an action by C. against the indorser:—*Held*: it was not necessary to prove an actual demand on A.—*SAUNDERSON v. JUDGE* (1795), 2 Hy. Bl. 509; 126 E. R. 675.

*Annotations*:—*Consd. Callaghan v. Aylett* (1810), 2 Camp. 549; *Fenton v. Goundry* (1811), 13 East, 459; *Rowe v. Young* (1820), 2 Bli. 391; *Bailey v. Porter* (1845), 14 M. & W. 44. *Mentd. Parker v. Gordon* (1806), 7 East, 385; *Smith v. Sparrow* (1827), 4 Bing. 84.

### (c) To charge Surety.

**1554. Payable at particular place—Not "in body of it"**—Presentment to maker unnecessary.]—*STEVENSON v. BROWN*, No. 1529, *ante*.

## 8.—WHEN PRESENTMENT EXCUSED.

See 1882 Act, s. 46 (1).

**1555. Political state of country.**—A bill drawn on Leghorn was not presented in due time, owing to the political state of the country at that time, which rendered it impossible to present it:—*Held*: it being afterwards presented for payment with diligence, & refused for want of presentation

a promissory note, made payable "at the M. bank," there was no allegation in the statement of claim to show that the note was made payable at that place, or that it was duly presented for payment there:—*Held*: in the absence of such averments & proof, pltf. could not recover.—*DARLING v. GILLIES* (1888), 30 N. S. R. (R. & G.) 423; 9 C. L. T. 120.—CAN.

—A promissory note made payable at a particular place must be presented there on the day it falls due, or the holder cannot recover against indorser.—*TRUSCOTT v.* (1836), 5 O. S. 134.—CAN.



at the time when it was due, the holder might recover against the antecedent parties, & evidence of the impossibility of presenting at the time of the maturity of the bill might be given, on the ordinary averment that it was duly presented.—*PATIENCE v. TOWNLEY* (1805), 2 Smith, K. B. 223.

**1556. — Decrees extending time of payment.]**

—A bill of exchange was drawn & indorsed by depts. in England upon French subjects resident in Paris, & was accepted by them in Paris. The bill on the face of it was payable on Oct. 5, 1870, but before that date the French Emperor, in consequence of war with Germany, enlarged the time for the payment & protesting of current bills of exchange for one month, & the time was afterwards enlarged from time to time by the govt. of France for the time being. By those enlargements of time depts.' bill did not become payable till Sept. 5, 1871. On that day the bill was presented to the acceptors & payment refused, & it was duly protested, & due notice of dishonour, etc., given to all the parties:—*Held*: depts. were liable on the bill at the suit of their indorsee for value.—*ROUQUETTE v. OVERMANN* (1875), L. R. 10 Q. B. 525; 14 L. J. Q. B. 221; 33 L. T. 420.

*Annotations*:—*Apld.* *Re Francke & Rasch*, [1918] 1 Ch. 470. *Reid.* *Casanova v. Meier* (1885), 1 T. L. R. 213.

**1557. — Bills accepted payable in an enemy country after the outbreak of war had been drawn by an enemy firm carrying on business in England, & purchased from the firm before the war by an English bank, in whose hands they remained unpaid. The due date according to the tenor had passed, but presentment had not been made. Emergency legislation of the enemy country since the war postponed the maturity of bills till further notice, & in the case of British creditors forfeited interest between the original due date & the end of the period of postponement. On a claim by the bank against the assets in a winding up of the business of the firm under Trading with the Enemy Amendment Act, 1916 (c. 105):—*Held*: the due date, being determinable by the law of the enemy country where bills were payable, had not yet arrived, & the claim failed.—*Re FRANCKE & RASCH*, [1918] 1 Ch. 470; 87 L. J. Ch. 273; 118 L. T. 211; 34 T. L. R. 287; 62 Sol. Jo. 438.**

**1558. Promise by drawer to find funds.]—**The holder of a bill of exchange applied on the day before the bill became due to the drawee, who informed him that he had no effects of the drawer's in his hands, but that they would probably be supplied before the next day. On the next day the drawer informed the holder, that he would endeavour to provide effects, & would call upon him again:—*Held*: that did not supersede the necessity of a presentment on that day.—*PRIDEAUX v. COLLIER* (1817), 2 Stark. 57, N. P.

*Annotations*:—*Apld.* *Pickin v. Graham* (1835), 1 Cr. & M. 725. *Reid.* *Hill v. Heap* (1823), Dow. & Ry. N. P. 57.

**1559. Delay at request of drawer.]—**A railway co. had entered into an agreement with a landowner

for the purchase of land A. They found that they did not at the time require that land, but required immediately land B., belonging to the same landowner. He consented to sell them B., if they would at the same time pay for A. The finance committee of the co. drew a cheque for the price of A. & another for the price of B., & left the chairman to make the best arrangement he could with the landowner. The agent of the landowner received both cheques, upon an agreement that the cheque for B. should not be presented for a week, to give time for the completion of a more formal agreement as to the purchase of A. than that which had been executed. The preparation of the agreement having been delayed beyond the week communications took place between the chairman of the finance committee, who was one of the drawers of the cheque, & the landowner's solr., in which the former desired that the cheque might continue to be retained, as the agreement was not completed. The fact of the cheque being outstanding had been the subject of discussion in the finance committee, & had been considered by them unsatisfactory. Before the execution of the agreement, & before the presentation of the cheque, the bank failed on which it was drawn, & in which the chairman was a partner:—*Held*: whether the chairman, in desiring the presentation of the cheque to be delayed, was acting *ultra vires* or not, his act was sanctioned by the committee & bound the co., who must bear the loss. *Seem*: the chairman was not acting *ultra vires*, being one of the drawers of the cheque.—*WARD (LORD) v. OXFORD, WORCESTER & WOLVERHAMPTON RY. CO.* (1852), 2 De G. M. & G. 750; 22 L. J. Ch. 905; 22 L. T. O. S. 13; 1 W. R. 9; 42 E. R. 1065, L.JJ.

**9.—WHEN PRESENTMENT DISPENSED WITH.**

*See* 1882 Act, s. 46 (2).

**1560. Bankruptcy of acceptor or maker.]—**An allegation that the makers of a note became insolvent & wholly declined then & thenceforth to pay at the place specified any of their notes does not show a discharge of presentment & demand, nor can it be intended from the allegation of refusal that there was a presentment.—*BOWES v. HOWE* (1813), 5 Taunt. 30; 128 E. R. 596, Ex. Ch.; *revg.* S. C. *sub nom.* *HOWE v. BOWES* (1812), 16 East, 112.

—*Consd.* *Rowe v. Young* (1820), 2 BH. 391. *Foll.* *Sands v. Clarke* (1849), 8 C. B. 751. *Reid.* *Turner v. Stones* (1848), 12 L. J. Q. B. 803; *Re East of England Banking Co.* (1888), L. R. 6 Eq. 366. *Ment.* *Crosse v. Smith* (1813), 1 M. & S. 545; *Re Agra Bank, Ex p. Tondeur* (1867), L. R. 5 Eq. 160.

to C. & P., & took their acceptance for the amount, half of which was guaranteed by debt. Before the bill

**PART XII. SECT. 2, SUB-SECT.**

**1560 i. Bankruptcy of or**  
action was brought on a promissory note having about two years to run, on the ground that the maker had become insolvent & had left his domicile in Lower Canada:—*Held*: the note was exigible on proof of in-  
—*LOVELL v. MEKLE* (1883), C. J.

**1560 ii. —.]—**Where a note becomes payable before by reason of the insolvency of the maker & indorser, presentment against the indorser is necessary. *BANQUE NATIONALE v. MARTEL* Q. R. 17 S. C. 97.—*CAN.*

**1560 iii.**

mere assignment

of debtor's estate does not relieve from the duty of presentment to hold a prior indorser, & the fact that the assignment has been caused by a person who, being indorser, is creditor & also president of debtor co., is no evidence of implied waiver.—*HUGHAN v. SHORT & BINDER* (1914), 26 O. W. R. 845; 6 O. W. N.

Sect.

: Sub-sect. 9.]

due, C. & P. became insolvent, of which A. was then informed, & also that plffs. looked to him for the sum which he had guaranteed:—*Held*: in the circumstances, it was unnecessary for plffs. to present the bill when due.—*HOLBROW v. WILKINS* (1822), 1 B. & C. 10; 2 Dow. & Ry. K. B. 59; 1 L. J. O. S. K. B. 11; 107 E. R. 5.

*Annotations*:—*Consd.* Van Wart v. Woolley (1824), 3 B. & C. 439. *Reid.* Hitchcock v. Humfrey (1843), 6 Scott, N. R. 640.

**1562.** ———.]—Debt for goods sold. Fourth plea, that defts. delivered to plff., for & on account of the debt, promissory notes, of which defts. were bearers, made by L. & Co., payable to bearer on demand, & that plff. did not present them within a reasonable time. Replication, that, before the delivery of the notes to plff., L. & Co. became bkpts. & unable to pay them, that, at the time of the delivery of the notes, plff. had no notice or knowledge of L. & Co. having become bkpts. or unable to pay, that, before a reasonable time for presentment had elapsed, plff. had notice of L. & Co. having become bkpts. or unable to pay, & within a reasonable time after such notice, gave notice to defts. of the premises, & being holder of the notes, offered to defts. to return them, & requested defts. to pay the debt, & that, had the notes been presented to L. & Co., or to any person on their behalf, they would not have been paid. Rejoinder to replication to fourth plea, that defts. delivered the notes to plff. in the *bona fide* belief that they would be paid, that they had not, at the time of the delivery of the notes, or before plff. offered to return them, any knowledge, or any reason to believe, that L. & Co. had become bkpts. or unable to pay the notes, & that plff. did not give defts. notice of the premises until after the expiration of a reasonable time for presentment:—*Held*: (1) the pleas were good; (2) the replication showed a sufficient excuse for non-presentment.—*ROBSON v. OLIVER* (1847), 10 Q. B. 704; 16 L. J. Q. B. 437; 9 L. T. O. S. 197; 11 Jur. 1056; 116 E. R. 268.

**1563.** When presentment cannot be effected—*Maker unable to be found.*—*LEESON v. PIGOTT* (1788), cited in Bayley on Bills, 6th ed., p. 400.

**1564.** ———. *Maker having absconded.*—Debt, by payee against maker of a promissory note, payable at No. 11, Old Slip. The declaration stated that when the note became due plffs. were ready & willing to present the note to deft., at No. 11, Old Slip, for payment, & they would have

duly presented same to deft. & demanded payment, but deft. was then absent from No. 11, Old Slip, & had then clandestinely absconded from thence without having left any effects or means for the payment of the note, nor were there any means there for the payment of the note, & deft. did not pay the note when it became due. Demurrer & joinder therein:—*Held*: the declaration failed to show a cause of action, by reason of the note not having been presented according to its exigency, & no sufficient legal excuse being shown for the omission.—*SANDS v. CLARKE* (1849), 8 C. B. 751; 19 L. J. C. P. 84; 14 L. T. O. S. 418; 14 Jur. 352; 137 E. R. 703.

*Annotation*:—*Mentd.* Maltass v. Siddle (1859), 6 C. B. N. S. 494.

**1565.** ———. *Bank having suspended payment—Bank note.*—Deft. paid for goods in D. market on Monday with notes of the S. bank, which had stopped payment the previous Saturday. The notes could not have been presented at the S. bank before Wednesday, on which day plff. met deft. at S. & offered to return or exchange the notes:—*Held*: a tender of the notes having been made in a reasonable time, plff. might recover the value of the goods, though there was no presentment at the S. bank.—*HENDERSON v. APPLETON* (1827), Chitty on Bills of Exchange, 11th ed., p. 259.

*Annotations*:—*Consd.* Rogers v. Langford (1833), 1 Cr. & M. 637. *Folld.* Turner v. Stones (1843), 1 Dow. & L. 122. *Reid.* Robson v. Oliver (1847), 10 Q. B. 704; *Re* East of England Banking Co. (1868), L. R. 6 Eq. 368.

**1566.** ———. ———.]—In an action for money had & received, it appeared that plff. had given deft. change for a banker's promissory note, after banking hours on a Saturday. The bank never opened again for the payment of notes, & on the Monday the insolvency of the bank being known to both parties, plff. sent the note back to deft., without having presented it at the bank. Deft. having refused to give back the change:—*Held*: it was not necessary that plff. should have presented the note at the bank, but, having given prompt notice to deft., he was entitled to recover from him the amount of the note.—*TURNER v. STONES* (1843), 1 Dow. & L. 122; 12 L. J. Q. B. 303; 1 L. T. O. S. 260; 7 Jur. 745.

—*Distd.* Sands v. Clarke (1849), 8 C. B. 751. *Appld.* Timmins v. Gibbons (1852), 19 L. T. O. S. 181. *Reid.* Robson v. Oliver (1847), 11 Jur.

**1567.** *Belief that bill will be dishonoured—Statement by acceptor that he cannot pay.*—A few days before a bill of exchange became due, the acceptor informed the drawer, that he

were bad.—*FORWARD v. THOMPSON* (1854), 12 U. C. R. 194.—CAN.

*a. — Illness of maker.*—In an action against the indorser of a promissory note:—*Held*: the circumstance of the maker lying dangerously ill would not excuse the want of presentment thereof at his residence or place of business, & a presentment to his brother in the street, near the residence, was insufficient.—*NOWLIN* (1843), 4 N. B. R. (2 Kerr.) 337.—CAN.

**1567 L.** *Belief that bill will be dishonoured.*—Presentation is not necessary as against the acceptor, drawer, or maker, unless it is pleaded & that there was provision at the place named to meet the note when it became due, & that it would have been paid if

—*Held*: due diligence had not been used to discover C.'s residence, & plffs. could not recover. *Semble*: the exertion of diligence was not wholly for the jury.—*BROWN v. R.* 64.—CAN.

**1564 L.**

—In *assumpsit* against maker & indorser of a note, the first count alleged that the maker had absconded, & was absent from Canada when the note fell due, & the second count averred, as an excuse for presentment, the absence of the maker & plff.'s inability to find him. Pleas to the first count, that the note was not duly presented for presentment, & that it was not duly presented at the maker's last place of abode; to the second count, that the maker's place of abode was well known to plffs. the note fell due:—

to be on a  
by C., e at no par-  
place, & deft. The  
C. then resided, for collection, & the clerk, who was to present it, stated that before the note became due he heard that C. had left A., that on its becoming due to the house in which C. but could get no information. He inquired of than one person who had known C. well, but their answers as to where had gone were conflicting. Witnesses the defence, of whom C.'s partner stated that no  
of  
at  
to



having no reason to  
uld be paid.])—The  
affairs of a firm being involved, they,  
in Nov., 1886, entered into an agree-  
ment with their principal creditors, in-  
cluding the S. bank, & L., a trader,  
who held their acceptance for \$700,  
whereby, on the narrative that the  
creditors were willing to wait the result  
of the liquidation after-mentioned, the  
firm conveyed their whole estates to

## BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

ment for payment: Sub-sects. 9 & 10.]

and, there was no ground for a  
v. AUSTIN (1875), L. R. 10 C. P.

32 L. T. 669.

*Annotation*:—**Apld.** *Re* Bethell, Bethell v. Bothell (1887),  
34 Ch. D. 561.

1576. ————.]—A debtor gave to his creditor a cheque which was undated, he not at the time having a sufficient balance at his bankers to meet it, & it was arranged that, when a loan which debtor was negotiating was completed, he should inform the creditor, who was to fill in the date & present the cheque for payment. The loan was not completed, & debtor wrote to the creditor & informed him of the fact. The creditor did not fill in the date, or present the cheque for payment:—*Held*: presentment of the cheque, in the circumstances, would be dispensed with.—*Re BETHELL, BETHELL v. BETHELL* (1887), 34 Ch. D. 561; 56 L. J. Ch. 334; 56 L. T. 92; 35 W. R. 330; 3 T. L. R. 298.

**Mentd.** Barrett v. Davies (1904), 90 L. T. 460.

**1877. As regards Indorser—Acceptor not provided with funds.]**—Where a bill of exchange is accepted payable at a banker's, in order to charge an indorser presentment at the banker's is necessary, & the fact that there were no effects of the acceptor in the banker's hands at the time the bill became due does not excuse the want of due presentment as against the indorser.—SAUL C. JONES (1858), 1 E. & E. 59; 28 L. J. Q. B. 37; 32 L. T. O. S. 90; 5 Jur. N. S. 220; 7 W. R. 47; 120 E. R. 829.

*Wirth v.* (1875), L. R. 10 C. P.

**1578. By walver—Promise to pay.]—**Where a bill drawn & accepted for the accommodation of the

persons as attorneys to carry on the business, to ingather the debts due to the firm, & from time to time to make a ratable division of them among the creditors who were parties to the agreement. The attorneys & managers, by virtue of powers in the agreement, renewed from time to time L.'s bill till Apr., 1888, when they refused to renew it. In an action for payment against L., the drawer, by the bank, with whom he had discounted it, defender pleaded that he was dis- from liability in respect of the fact that the bank had not the bill to the acceptors for payment :- Held : presentment for to the acceptors was not seeing that by the agreement torn were not bound to pay the bill, & that the drawer had no reason to believe that it would be paid if presented, the acceptors being bound only to make payment ratable among the creditors of the funds in hand.--

OF SCOTLAND v. LAMONT & Co.  
89, 16 R. (C. of  
L. R.

f. ————. In  
the drawer of a bill of  
had not been accepted.  
was not entitled to judgment in the  
of proof presentment to  
drawer, or of evidence to show that  
the ———— was not bound, as between  
————— the drawer, to accept or pay  
the bill, & that the drawer had no  
————— to believe that the bill would be  
if presented.—FRANCIS V.

138

1578 I. —  
By Indivuer

run by

the indorser, in ignorance of the defect in due presentment, though he was aware at the time that he was discharged for want of due notice, is not a waiver of presentment.—**NOWLIN v. ROACH** (1843), 4 N. B. R. (2 Kerr.) 337.—**CAN.**

1878 II. —————.]—Where a bill of exchange was not presented for payment to the acceptor until a month after it fell due:—*Held*: a promise by an indorser of the bill to pay it, but that he was then short of money, did not dispense with proof of the due presentment for payment, unless the indorser made the promise with full knowledge of all the circumstances.—*DONNELLY v. HOWIE* (1833), 2 Ir. L. Rec. N. S. 79; *Hayes & Jo.* 436.—*IR.*

1578 iii. ———.]—In an action by indorsee against indorser of a promissory note, no demand on the maker's exors. was proved, but a letter from debt. to pltf. was given in evidence, desiring the note to be sent to a friend, that debt. might get some security upon the estate of the maker, & adding, "that pltf. might rely on the honourable discharge of every farthing of his demand, as he (debt.) was turning his property into cash":—*Held*: the letter dispensed with the necessity of proving a demand upon the exors.—*VALLOTEN v. FURNES* (1794).  
L. & S. 87.—IR.

1578 iv. -.]—Where the indorser of a promissory note, which had not been presented to the maker, promised payment thereof, knowing that he had not received due notice of dishonour, & in circumstances from which it might be inferred that he was aware of the non-presentation, & the

indorser, which was not  
 ment when due, yet if  
 after

appl  
furt)

to make payment on the bill, which declaration alleged the fact that the bill was duly presented for payment, that is evidence of a waiver of the objection, with notice of the fact of which he had the means of informing himself.—**HOPLEY v. DUFRESNE** (1812), 15 East, 275; 104 E. R. 848.

*Annotation*:—**Consd. Terry v. Parker** (1837), 6 Ad. & El. 502.

**1579.** — By drawer.]—In an action by indorsee against drawer of a bill of exchange a letter of debt. saying: "You know I meant to call upon you immediately after the 24th with the money. E. [the acceptor] is an old & intimate friend of mine":—*Held*: sufficient evidence of a waiver of presentment.—**MILLS v. GIBSON** (1847), 16 L. J. C. P. 249.

By maker.]—An indorsee declared against the maker of a promissory note, made payable at S., P., & Co.'s, & the declaration contained the usual averment, that the note was presented there for payment when it became due. Deft. pleaded that it was not presented for payment. No presentment was shown, but it was proved that after the note became due, it was shown to deft., when he promised to pay it by instalments:—*Held*: this was enough to raise the inference that the note had been duly presented & was sufficient proof of that averment to entitle pltf. to recover. *Qu.*: whether under those pleadings the promise of deft. was admissible in evidence of a waiver of presentment.—CROXON *v.* WORTHEN (1839), 5 M. & W. 5; 2 Horn. & H. 12; 8 L. J. Ex. 158; 3 Jur. 290; 151 E. R. 3.

*Compare Nos. 1419, 1420, ante.*

had been left to the jury on the point of waiver of presentment, who found for plff., the ct. refused to disturb the verdict.—*WATTERS v. LORDLY* (1842), 4 N. B. R. (2 Kerr.) 13.—CAN.

**1580 I.** *By maker.*—A promise by the maker of a note to pay it after it becomes due, with the knowledge that it had not been presented for payment, constitutes a waiver of presentment, & the maker is liable on the note.—**NEWTON v. HUSSON** (1914), 30 W. L. R. 89; 7 W. W. R. 726; 20 D. L. R. 817.—**CAN.**

1580 H. .—In assump.  
by payee against maker of a promissory note payable in the body at a particular place:—*Held*: a promise by left., after it became due, to pay the amount of the note, dispensed with the omission in the declaration of a special count averring presentment at the particular place, & with proof of such presentment.—*CARNAGIE v. KIRBY* (1842), 4 I. L. R. 392.—IR.

**Held:** waived by deft.'s promise to pay the note.—**FOSTER v. WOODWORTH** (1908), 8 W. L. R. 688.—OAN.

J. S. P. REED v. MEROER (1865),  
C. P. 279.—CAN.

**Compare cases on p. 226, only.**

k. — Offer to pay—By  
dorser.]—An offer made after its  
maturity by an indorser of a promissory  
note, to pay the amount of same, will  
not operate as a waiver of  
in the absence of evidence that at  
time of the offer he knew there had  
been default in presentment.

MURRAY (1909), 39 1 — R. 170:  
G. E. L. N. 609.—CAN.



1581. — Promise by indorser to guarantee.—In certain event.]—On Feb. 16, the day before a bill of exchange, drawn by pltf., accepted by M. & Co., & indorsed by deft., became due, the acceptors wrote to pltf. respecting the bill, & pltf. replied by a letter to the effect that he would proceed on the bill unless he had the continued guarantee of deft. The correspondence was sent by M. & Co. on Feb. 17 to deft., who wrote a letter, which contained the following passage: "If, as you propose, the drawer is willing to hold the bill over until you come to an arrangement for payment of same, I am willing to continue my guarantee as far as concerns the bill";—*Held*: the letter & the whole action taken by deft. amounted to a waiver of presentation for payment.—*SINGER v. ELLIOTT* (1887), 4 T. L. R. 34; *affd.* on other grounds, 4 T. L. R. 524, C. A.

1582. — Request that payee will return acceptance.]—A. accepted a bill in favour of B., payable at his bankers, but the bill was never presented. Eight months after the bill became due, A.'s bankers having funds of his in their hands became bkpt.:—*Held*: a request by A. subsequent to the bkpy., that B. would return the acceptance was no waiver of the laches.—*SEBAG v. ABITBOL* (1815), 1 Stark. 79, N. P.; *reversd.* on another point (1816), 4 M. & S. 462.

*Annotations*:—*Mentd.* *Rowe v. Young* (1820), 2 Bll. 391; *Turner v. Hayden* (1825), 4 B. & C. 1.

l. — By drawer.]—A bill of exchange was drawn by deft. on T. in Bangor, payable in Boston, & accepted generally by T., who had no place of business in Boston. T. died before the bill was due. There was no presentment in Boston, but presentment was made at T.'s place of business in Bangor. About six weeks after the bill was due, deft. wrote to pltf. regretting the non-payment, requesting time for payment, & to be dealt leniently with, & offering notes at four & six months, which pltf. refused:—*Held*: as it did not appear, when deft. made the offer, he was aware the bill had not been presented in Boston, there was no waiver of the presentment.—*DANA v. BRADLEY* (1862), 10 N. B. R. (5 All.) 292.—CAN.

n. — Part payment.]—Partial payment of a promissory note is a waiver of all objections as to want of demand of payment.—*RICE v. BOWKER* (1853), 3 L. C. R. 305.—CAN.

o. *S. P. SPARHAM v. CARLEY* (1892), 8 Man. L. R. 246.—CAN.

q. — Where part payment is made by the maker of a note after the due date, that fact constitutes an implied waiver on his part of presentment at the place of payment.—*NETHERLANDS BANK v. SCHLOCHAUER* (1903), T. S. 180.—S. AF.

r. — Request for time.]—Where deft., an absconding debtor, on the day a note became due, wrote to pltf. stating his inability to pay, & requesting further time:—*Held*: presentment was unnecessary, although the note was payable at a particular place.—*MCDONNELL v. LOWRY* (1834), 3 O. S.

s. — —.]—*DANA v. BRADLEY*, *supra.*—CAN.

t. — —.]—An application for an extension of time for payment of a promissory note is not a waiver on the part of debtor of the right to pay at the place specified in the note.—*BENNETT v. BENNETT* (1879), 1 L. N. 350; 2 L. N.

u.

.]—In an action on a

promissory note made by deft., pltf.'s attorney gave evidence that deft. him to wait until he could see pltf., & that deft. subsequently told him he had come to an understanding with pltf. or something to that effect:—*Held*: there was a waiver of presentment.—*SPARHAM v. CARLEY* (1892), 8 Man. L. R. 246.—CAN.

w. — —.]—In an action by holder against drawer, who had indorsed it to him, the drawer pleaded that the bill had not been duly presented for payment to the acceptor. The drawer had, in answer to a demand for payment, written as follows: "Do not press us for the bill. Though of old date, it will not be treated by us in anything but an honest way":—*Held*: the letter, whether regarded as a waiver of the objection, or as evidence of due negotiation, was sufficient to elide the defence.—*MITCHELL & CO. v. ALLHUSEN & SONS* (1870), 8 (Ct. of Sess.) 600; 42 Sc. Jur. SCOT.

x. — —.]—Where the drawer of a cheque notifies the payee that he has stopped payment, he thereby waives presentment.—*TRAPP & CO. v. PHILIPPS* (1912), 17 B. C. R. 298.—CAN.

y. — Indorser returning note to payee—& telling him to keep it.]—*Held*: evidence of dispensation of by indorser.—*MASTERS v.* (1860), 9 N. B. R. (4 All.) 453.—CAN.

z. — Indorser requesting indorsee to waive protest—& agreeing to hold himself liable as if note presented.]—*Held*: though the indorser was precluded from setting up want of presentment, the maker was not.—*r. McLELLAN* (1866), 17 C.

a. — Waiver of demand is waiver of presentment.]—*BURTON v. GORFIN* (1), 5 B. C. R. 454.—CAN.

b. — Demand in street— for demand to be repeated— deft. had waived right to a demand at his house.

of Liability.]—The drawer of a bill, after its maturity, wrote a letter to the holder in the following terms: "I accept notice of non-payment of my d liability to you therein in every same had been given in a regular way." The had not, in fact, been presented for payment, but of that the drawer, when he wrote the above letter, was ignorant:—*Held*: there had been no dispensation by the drawer of the consequences of non-presentment for payment.—*KERR v. BURKE* (1885), Cal. & El. 551.

#### SUB-SECT. 10.—EFFECT OF DELAY MAKING PRESENTMENT.

1584. Whether acceptor discharged.]—In an action by indorsee against acceptor of a bill of exchange, no demand was proved till 3 months after the bill was due & when the drawer had become insolvent:—*Held*: the acceptor of a bill or maker of a note always remained liable.—*ANDERSON v. CLEVELAND* (1769), cited in 13 East, at p. 430, n.; 104 E. R. 438.

—*Consd.* *Price v. Edmunds* (1829), 5 Man. & Ry. K. B. 287.

Bluett, 297.—L. of M. (1845),

c. — Onus of proof of waiver on pltf.]—*HEUGHAN v. SHORT & BINDER* (1814), 28 O. W. R. 845; 6 O. W. N. 545.—CAN.

d. Bill presented day before Refusal to pay on day of maturity.]—*Held*: such refusal rendered the actual presentment of the bill on that day unnecessary.—*CHANDLER v. BROOKWITH* (1838), 2 N. B. R. (Ber.) 423.—CAN.

f. Note indorsed when overdue.]—A., the indorsee, sued B., the indorser, alleging that after the note became due, B. indorsed to A. There was no averment of presentment or of notice:—*Held*: the note being indorsed when overdue was no excuse for non-presentment, & so the declaration showed no cause of action.—*DAVIS v. DUNN & PARKER* (1850), 6 U. C. R. 327.—CAN.

#### PART XII. SECT. 2, SUB-SECT. 10.

1584 i. Whether acceptor discharged.]—*Seemle*: the maker of a promissory note is not discharged by the holder's failure to present it at due date.—*RAMAKRISHNAYYA v. KASSIM* (1889), I. L. R. 13 Mad. 172.—IND.

1584 ii. — No funds on due date.]—Where presentment for payment of a note was made 2 days after due date & the certificate of presentment simply stated "no funds," but contained no statement as to whether there had been funds to meet the note on due date:—*Held*: in the absence of evidence on the certificate to show that there had been no funds to meet the note on the due date, provisional sentence on the note against an indorser must be reversed.—*WESTMAN v. LOMBARD* (1880), 1 C. 13.—S. AF.

1584 iii. — —.]—In a similar case, where the certificate stated "no funds, nor were there any on the day the note became due, nor have there been any since," provisional sentence on the note was granted.—*ORIENTAL BANK CORPS. v. SHAW* (1880), 1 E. D. C. 187.—S. AF.

# 248 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—Presentment for payment: Sub-sect. 10*  
*11. Sect. 3: Sub-sect. 1.]*

1585. —.]—A bill of exchange was accepted payable at P. & H., bankers, London, but was not presented there for payment when due, nor until some days after:—*Held*: the acceptor was still liable, no inconvenience having resulted to him from the delay to present the bill.—*RHODES v. (1821), 5 B. & Ald. 244; 106 E. R. 1182.*

1586. —.]—An acceptor of a bill is not discharged by the bill not being presented for payment for three or four years after it becomes due.—*FARQUHAR v. SOUTHEY (1826), 2 C. & P. 497; Mood. & M. 14, N. P.*

1587. Discharge of bill & consideration.]—Where plff. in Yorkshire on Dec. 26 received a bill of exchange, payable in London, which became due on the 28th, & kept it in his own hands until the 29th, when he sent it by post to his bankers at Lincoln, who duly forwarded it to London for presentment, & the bill was dishonoured:—*Held*: plff. by keeping it in his hands until the 29th, was guilty of laches.—*ANDERTON v. BECK (1812), 16 East, 248; 104 E. R. 1083.*

1588. —.]—Plff. agreed to take a bill of exchange drawn by deft. & accepted by A., payable to order, in satisfaction of a promissory note for a much larger amount, on condition that the original note should revive, if the bill should be dishonoured. The bill was dishonoured, but no demand was made on deft. on the day it became due, & on the following day deft. tendered the amount, which plff. refused to accept & sued on the original note:—*Held*: plff. was not entitled to recover.—*SOWARD v. PALMER (1818), 8 Taunt. 277; 2 Moore, C. P. 274; 129 E. R. 390.*

*Annotations: Distd. Lumley v. Musgrave (1837), 1 Jur. 700. Mentd. Sued v. Pompe (1860), 3 L. T. 17.*

1589. —.]—A creditor, who takes from his debtor's agent on account of the debt the cheque of the agent, is bound to present it for payment within a reasonable time, & if he fails to do so,

& by his delay alters for the worse the position of debtor, debtor is discharged, although he was not a party to the cheque.—*HOPKINS v. WARE (1869), L. R. 4 Exch. 268; 38 L. J. Ex. 147; 20 L. T. 668.*

1590. Holder affected with equities between drawer & indorsee.]—B. drew a bill on demand for £7,000 in the Bank of England "on account of dividends & interest due on the capital & dividends registered in the books" of the bank. B. had no account with the bank. The bill was in 1878 indorsed to G., with whom B. lived as his wife, & by him indorsed to C. in 1876. B. died intestate in 1878. In 1882 the bill was dishonoured & protested. C. sought to prove in the administration of B.'s estate. It was objected that G. gave no consideration for the bill:—*Held*: G. had no right to deal with the bill, & the lapse of time between the first & second indorsement & between the latter & presentment affected C. with the equities between B. & G., & he was not entitled to recover.—*Re BOYSE, CROFTON v. CROFTON, CANONGE'S CLAIM (1886), 33 Ch. D. 612; 56 L. J. Ch. 135; 55 L. T. 391; 35 W. R. 247.*

## SUB-SECT. 11.—EFFECT OF NON-PRESENTMENT.

1591. Drawer discharged.]—If the party to whose hand a bill of exchange comes, neglect to receive it from the acceptor, he shall not resort to the drawer.—*CLERK v. MUNDALL (1698), 12 Mod. Rep. 203; Holt, K. B. 114; 3 Salk. 68; 88 E. R. 1263, N. P.; sub nom. CLARK v. MUNDAL, 1 Salk. 124.*

1592. Acceptor not discharged.]—A bill of exchange payable at a bankers in London, which, by reason of being mislaid, was not presented for payment, but the acceptor was some months afterwards informed of its being mislaid:—*Held*: not

*of bill d*  
*Held*: by reason of undue delay for presentment the drawer of a cheque was discharged, not merely in respect of it, but also from the original liability, for which it was given.—*CALOANY BREWING & MALTING CO., LTD. v. ROGERS, (1918) 1 W. W. R. 965. —CAN.*

1587 II. —.]—Where a creditor, upon maturity of a loan, accepts a promissory note of another, indorsed by debtor, for the amount of the loan, if such note is not presented for payment at maturity, the creditor will not be prevented from suing debtor upon the original debt, unless it is shown that there was money at the place of payment ready to pay such note at its maturity.—*HATFIELD v. WORDEN (1913), 14 E. L. R. 14. —CAN.*

H. gave to C. a cheque for \$75 on the U. bank. C. indorsed it over to plff., who did not present it, until some twelve days after its date, when it was refused for want of funds. Some days after it was presented again with the result. On action against C.:—*by*

*v. HUNTER (1883), 6 L. . 310. CAN.*

*k. Indorser of cheque*  
*—HARRIS ABATTOIR CO. v.*

& WILSON (1914), 31 O. L. R. 453; 30 D. L. R. 651; 6 O. W. N. 468.—*CAN.*

l. —.]—The indorsee of a cheque has no remedy as against the indorser, if the indorsee has been guilty of negligence in not presenting the cheque at the proper time.—*KERR v. DONIAN (1880), F. 184.—S. AF.*

m.  
*of third person given to creditor.*  
 Where the cheque of a third person is received from debtor as conditional payment of an antecedent debt, the creditor must without undue delay present the cheque for payment, & if it is dishonoured, claim recourse against debtor on the original indebtedness. Unless this is done, the creditor will be taken to have accepted the cheque in payment of the debt, & debtor is discharged.—*SAWYER v. (1899), 18 A. R. 129.—CAN.*

—Where defts. gave plff. a cheque of B. on a bank:—*Held*: under a plea of payment, defts. could not set up that plff. by his laches in pre- & notice, had made the cheque

37 U. C. R. 106.—*CAN.*

## PART XII. SECT. 2. SUB-SECT. 11.

1591 I. *Whether drawer discharged.*  
 Where a hundi has not been presented for payment & the holder is

to recover from the drawer, it lies on plff. to show that the drawer could not have suffered any loss by reason of the hundi not having been presented.—*MANHE MAL v. CHET RAM I. L. R. 41 All. 40.—IND.*

1591 II. — *Drawer's neglect to due diligence.*—The drawer of a bill induced the holder to delay presenting it for payment when due; after the protracted term had elapsed, the drawer at his own request, had the bill sent to him by the holder to receive payment, & thereafter protested it for non-payment, but neglected to use any measures of diligence against the acceptor, who became insolvent:—*Held*: the drawer was liable in payment of the contents of the bill, & was barred from pleading want of due negotiation.—*TRUSTEES v. BROWN 14 Sh. (Cl. of Sess.) 999.—SCOT.*

*holder acceptor*  
 —The neglect to demand payment of a promissory note payable on demand, or default of an allegation, in an action to recover the amount of the note, that such demand for payment was made, cannot be the subject of the defence in law, such an action importing a demand payment before the institution of the action may, at the most, permit deft. to escape the costs of the action upon depositing the amount claimed or



to be discharged, but the drawer might set it off in an action brought against him by the acceptor, although the banker at whose house the bill was payable failed in the interval, & the acceptor had at all times up to the failure of the banker a balance in his hands sufficient to cover the acceptance.—**SEBAG v. ABITBOL** (1816), 4 M. & S. 462; 105 E. R. 905.

*Annotations*.—**Consd.** *Rowe v. Young* (1820), 2 B.L. 391. **Mentd.** *Turner v. Hayden* (1825), 4 B. & C. 1.

**1593. Discharge of debt.**—In an action for the price of goods, it appeared that same were sold at York, on Saturday, Dec. 10, 1825, & on the same day, at three o'clock in the afternoon, the vendee delivered to the vendor, as & for payment of the price, certain promissory notes of the bank of D. & Co., Huddersfield, payable on demand to bearer. D. & Co. stopped payment on the same day at eleven o'clock in the morning, & never afterwards resumed their payments, but neither of the parties knew of the stoppage, or of the insolvency of D. & Co. The vendor never circulated the notes, or presented them to the bankers for payment, but on Saturday the 17th, he required the vendee to take back the notes, & to pay him the amount, which the latter refused:—**Held**: in the circumstances, the vendor of the goods was guilty of laches, & had thereby made the notes his own, & they operated as a satisfaction of the debt.—**CAMIDGE v. ALLENBY** (1827), 6 B. & C. 373; 9 Dow. & Ry. K. B. 391; 5 L. J. O. S. K. B. 95; 108 E. R. 489.

*Annotations*.—**Consd.** *Turner v. Stones* (1843), 1 Dow. & L. 122. **Distd.** *Robson v. Oliver* (1847), 10 Q. B. 704; *Timmins v. Gibbins* (1852), 18 Q. B. 722. **Consd.** *Lichfield Union Grdns. v. Greene* (1857), 1 H. & N. 884. **Distd.** *Leeds & County Bank v. Walker* (1883), 11 Q. B. D. 84. **Refd.** *Rogers v. Langford* (1833), 1 Cr. & M. 637; *M'Donnell v. Murray* (1859), 1 L. T. 498; *Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184; *Dumont v. Williamson* (1867), 17 L. T. 71. **Mentd.** *Smith v. Mercer* (1867), L. R. 3 Exch. 51.

**1594. Discharge of bill & consideration—Parties not entitled to notice of dishonour.**—The question, whether a party, who receives a cheque on a banker, makes it his own by not presenting it in due time, so as to release the maker of the cheque, does not arise, if, on the cheque being dishonoured, the various parties, who are concerned in the matter, are none of them entitled to notice of dishonour.—**DEVERELL v. WHITMARSH** (1841), Jur.

*dec.*—**EASTERN TOWNSHIP BANK v. WOODWARD** (1904), 6 Q. P. R. 458.—**CAN.**

**1592 II.** —.—.]—Pltf., in subscribing for shares of deft. co., covenanted to pay "all other calls, if any, as same may from time to time be made." Defts. subsequently made a call, & offered to take a promissory note for the amount, & enclosed a blank note for the purpose, stating in the letter that the giving of a note simply meant an extension of time for payment, & that in the event of non-payment the shares would be liable to be forfeited. Pltf. signed the note, which was not presented for payment at the branch indicated, where pltf. at all times had a sufficient balance to pay it, & it was not paid.—**Held**: the note was given for & on account of the debt, & the only effect of non-presentment upon such note was upon the question of costs.

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*r.* **KAMMERER** 1 O. W. R. 425.—**CAN.**

**q. Whether debtor discharged—Cheque of third person given.**—Where defts., being indebted to pltf., sent them the cheque of B. for a portion of the amount:—**Held**: under a plea of payment, pltf. was not bound to prove presentment of the cheque & dishonour.—**CAMPBELL v. HEASLIP** (1888), 6 Man. L. R. 64.—**CAN.**

*r.* —.—.]—Deft., who was indebted to pltf., on Jan. 12 gave them in settlement a post-dated cheque drawn by a third party, which pltf., believing it to be for immediate payment, sent to their bankers. On learning that the cheque was post-dated pltf. immediately took action & a summons was issued on Jan. 20. Pltf. did not return the cheque, & allowed the due date to pass without presenting it:—**Held**: as deft. might have sustained damages by reason of pltf.'s laches in keeping the cheque without notifying his refusal to accept it, the case should be remitted to the magistrate, th to stand & leave given to ( to set

**1595.** —.—.]—If a creditor takes a bill of exchange from his debtor as collateral security for payment of his debt & retain it until it becomes due his duty is to present the bill for payment; & if he omits to do this & the bill consequently becomes worthless, he cannot afterwards sue his debtor, either on the bill or on the original consideration.—**PEACOCK v. PURSELL** (1868), 14 C. B. N. S. 728; 2 New Rep. 282; 32 L. J. C. P. 266; 8 L. T. 636; 10 Jur. N. S. 178; 11 W. R. 834; 143 E. R. 630.

*Annotations*.—**Refd.** *Yglesias v. River Plate Bank* (1877), 3 C. P. D. 60; *Goldfarb v. Bartlett & Kromer*, (1920) 1 K. B. 639.

**As regards bank notes.**—See **BANKERS & BANKING**, Vol. III., pp. 198–200.

### SECT. 3.—DISHONOUR.

#### SUB-SECT. 1.—BY NON-ACCEPTANCE.

See 1882 Act, ss. 43, 44 (1).

**1596. Right of recourse by holder—Before maturity of bill—Foreign bill.**—P. drew a foreign bill at one hundred & twenty days. The drawee refused to accept, & the holder brought action within the one hundred & twenty days. On a motion to stay the action as premature:—**Scmble**: pltf.'s right to sue was not suspended for that time.—**BRIGHT v. PURRIER** (1765), 3 Burr. 1087; Bull. N. P. 269; 97 E. R. 1047.

—**Folld.** *Millford v. Mayor* (1779), 1 Doug. K. B. **Refd.** *Ballingalls v. Gloster* (1803), 3 East, 481.

**1597.** —.—.]—If a bill of exchange is not accepted, an action will lie upon it against the drawer, before the time when it is made payable.—**MILFORD v. MAYOR** (1779), 1 Doug. K. B. 55; 99 E. R. 39.

*Annotation*.—**Refd.** *Ballingalls v. Gloster* (1803), 3 East, 481.

**1598.** —.—.]—An action lies by indorsee against indorser upon a bill of exchange immediately on the non-acceptance of the drawee, though the time for which the bill was drawn be not elapsed.—**BALLINGALLS v. GLOSTER** (1803), 3 East, 481; 102 E. R. 681.

*Annotation*.—**Mentd.** *Stacey v. Barnes* (1806), 3 Smith, K. B. 441.

up a plea by way of estoppel or any other plea he might be advised to set up.—**JOCHELSON, YAMEY & Co. v. MAHOMED** (1916), C. P. D. 233.—**S. AF.**

**bill & consideration**  
If a bill of exchange is drawn for the balance of an account acknowledged to be due to pltf. from the drawer, who has no funds in the drawee's hands, pltf. may recover on the count upon the account stated, if in consequence of not alleging the excuse for non-presentment, he is unable to recover upon the special count.—**SON v. GARDINER** (1849), 1 All. —**CAN.**

#### PART XII. SECT. 3, SUB SECT. 1.

**1596 I. Right of recourse by holder—Before maturity of bill.**—Dishonour by non-acceptance of a hundi payable at a fixed date gives an immediate cause of action against the drawer, & there is no need to wait until the maturity of the hundi or to present it for payment.—**RAM RAVJI JAMESHEKAR v. PRALHADDAS SUBKARN** (1895), 1 L. R. Bom.

## 250 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 3.—Dishonour: Sub-sects. 1 & 2. Sect. 4: Sub-sect. 1.]*

— **Before non-payment of bill.]**—The holder of a bill of exchange, on non-acceptance, & protest & notice thereon, has an immediate right of action against the drawer, & does not acquire a fresh right of action on the non-payment of the bill when due.—*WHITEHEAD v. WALKER* (1842), 9 M. & W. 506; 1 Dowl. N. S. 600; 11 L. J. Ex. 168; 152 E. R. 214; *subsequent proceedings*, 10 M. & W. 696.

—*Mentd.* *Hemp v. Garland* (1843), 4 Q. B. 519  
*Oulds v. Harrison* (1854), 10 Exch. 572.

### SUB-SECT. 2.—BY NON-PAYMENT.

1882 Act, s. 47.

**1600. Right of recourse by holder—Payment refused by acceptor.]**—Where the acceptor having said at eleven o'clock in the day that he would not pay the bill:—*Held*: the holder could immediately resort to the drawer.—*Ex p. MOLINE* (1812), 10 Ves. 216; 1 Rose, 303; 31 E. R. 498, L. C.

—*Mentd.* *Rohde v. Proctor* (1825), 4 B. & C. 1; *Re Cohen, Ex p. Johnson* (1834), 3 Deac. & Ch. Bellman, *Ex p. Baker* (1877), 25 W. R. 451.

— **Before reasonable time for payment.]**

To a declaration against the indorser of a bill of exchange, deft. pleaded that the action was commenced before a reasonable time for the payment of the bill by deft. had elapsed after notice of dishonour:—*Held*: bad.—*SIGGERS v. LEWIS* (1834), 1 Cr. M. & R. 370; 2 Dowl. 681; 4 Tyr. 847; 3 L. J. Ex. 312; 149 E. R. 1123, Ex. Ch.

—*Notes*: *Distd.* *Brighty v. Norton* (1862), 32 L. J. Q. B. 712.  
*Consd.* *Mallard v. Page* (1870), L. R. 5 Exch. 312.  
*v. Pompe* (1860), 3 L. T. 17.

**1602. — Effect of previous non-acceptance.]**—*WHITEHEAD v. WALKER*, No. 1599, *ante*.

**1603. — Onus of proof that right of action had accrued.]**—In an action against indorser of a bill of exchange, issue was joined as to notice of dishonour. A letter containing the notice was put into the post on the day on which the action was commenced, & by the routine of the post-office, would reach deft. between four & five in the afternoon of that day. No further evidence was given as to the time of notice. The offices of the pt. were open only till five in the afternoon of the day in question:—*Held*: pltf. must fail, it lying on him to show that the right of action was complete before the suit was commenced.—*CASTRIQUE v.*

(1844), 6 Q. B. 498; 1 New Pract. Cas. 14 L. J. Q. B. 3; 9 Jur. 130; 115 E. R.

*Apld.* *Hinton v. Duff* (1862), 11 C. B. N. S. 724.

**1604. — On last day of grace.]**—When payment of a bill of exchange is refused by the acceptor at any time on the last day of grace, the holder, though he is entitled at once to give notice of dishonour to the drawer & the indorsees, has no cause of action against either the acceptor or the other parties to the bill until the expiration of that day, & an action brought by the holder against the acceptor on the last day of grace must be dis-

J. Q. B. 761; 71 L. T.

144; 42 W. R. 641; 10 T. L. R. 572; 38 Sol. Jo. 616; 9 R. 564, C. A.

**Time of payment expiring on Saturday**

—**Action commenced on Monday.]**—The time for payment of a promissory note expired on Saturday, Sept. 22, 1906. The writ in an action upon the note against the makers was issued on Monday, Sept. 23, 1912:—*Held*: inasmuch as the cause of action was complete at the commencement of Sept. 23, 1906, that day must be included in calculating the six years within which the action could be brought under Stat. Limitations, & as the six years expired on Sunday, Sept. 22, 1912, the writ was issued too late.—*GELMINI v. MORIGGIA*, [1913] 2 K. B. 549; 82 L. J. K. B. 949; 109 L. T. 77; 29 T. L. R. 486.

—*See, also*, Sect. 2, sub-sect. 2, *ante*, Part V., & Part VIII., Sect. 1, *ante*, Part XIV., Sect. 2, sub-sect. 3.

### SECT. 4.—NOTICE OF DISHONOUR.

*See* 1882 Act, ss. 48–50.

#### SUB-SECT. 1.—NECESSITY FOR NOTICE.

*See* 1882 Act, ss. 48, 52 (3).

**1606. On dishonour by non-acceptance.]**—The holder of a bill of exchange, who presents it for acceptance, must give notice, if it is refused to be accepted.—*BLESARD v. HIRST* (1770), 5 Burr. 2670; 98 E. R. 402.

—*Annotations*:—*Fold.* *Goodall v. Dolley* (1787), 1 Term Rep. 712. *Apld.* *O'Keefe v. Dunn* (1815), 6 Taunt. 305. *Distd.* *Dunn v. O'Keefe* (1816), 5 M. & S. 282. *Mentd.* *Pickin v. Graham* (1833), 1 Cr. & M. 725; *Houlditch v. Cauty* (1838), 4 Bing. N. C. 411.

**1607. — Foreign bill.]**—Where the holder of a foreign bill, after a refusal by the drawee to accept, presented it for payment when due, & was refused payment, at any rate the holder is bound to give notice to the drawer of the non-acceptance, without which the original payee, to whom the bill was returned, cannot recover against the drawer.—*ORR v. MAGINNIS* (1806), 7 East, 359; 8 Smith, K. B. 328; 103 E. R. 139.

—*Notes*:—*Consd.* *Smith v. Thatcher* (1821), 4 B. & Ald. 200. *Repld.* *Leage v. Thorpe* (1810), 12 East, 171.

**1608. — —.]**—To an action of *assumpsit* by the fourth indorsee of a foreign bill of exchange against the first indorser, alleging for breach non-payment by the drawee, deft. pleaded, that before the bill became due, & after the indorsement to the third indorsee, & before the indorsement to pltf., the bill was refused acceptance, & was protested, that the third indorsee & pltf., at the time of the indorsement to the latter, had notice of the non-acceptance & protest, & that deft. had not due notice of the non-acceptance or of the protest:—*Held*: a replication *de injuria* to the plea was good.—*WHITEHEAD v. WALKER* (1842), 9 M. & W. 506; 1 Dowl. N. S. 600; 11 L. J. Ex. 168; 152 E. R. 214; *subsequent proceedings*, 10 M. & W.

(1843), 4 Q. B.  
*Oulds v. Harrison* (1854), 10 Exch. 572.



**1609.** Simultaneous notice of dishonour by non-acceptance & by non-payment not sufficient.]—If a bill of exchange is presented for acceptance & not accepted, the drawer & indorsers are discharged by want of due notice of its being thus dishonoured, although the holder presents it for payment when due, & then gives them notice of its being dishonoured both for non-acceptance & non-payment.—*ROSCOW v. HARDY* (1810), 12 East, 434; 2 Camp. 458; 104 E. R. 170.

*Annotations*:—*Distd.* Dunn v. O'Keeffe (1816), 5 M. & S. 282. *Refd.* Huntley v. Sanderson (1833), 3 Tyr. 460; Whitehead v. Walker (1842), 11 L. J. Ex.

**1610.** —.]—In an action by the indorsee of a bill of exchange drawn payable to deft. or his order, & indorsed by deft. to pltf., deft. pleaded that, after the indorsement by him to pltf., & before the bill became due, pltf., being then the holder, indorsed it to a person unknown, who presented it to the drawee for acceptance, that the drawee refused to accept it, & that deft. had no due notice of the dishonour for non-acceptance. Pltf. replied, *de injuriâ*:—*Held*: the plea was a good answer to the declaration.—*BARTLETT v. BENSON* (1845), 14 M. & W. 733; 3 Dow. & L. 274; 15 L. J. Ex. 23; 153 E. R. 670.

**1611.** On dishonour by non-payment.]—A. a bill upon B. to the use of C., & upon non-payment C. protested the bill:—*Held*: he could not sue A., unless he gave him notice that the bill was protested, for A. might have the effects of B. in his hands, by which he might satisfy himself.—*ANON.* (1609), 1 Vent. 45; 86 E. R. 32.

#### PART XII. SECT. 4, SUB-SECT. 1.

**1609 i.** On dishonour by non-acceptance—Simultaneous notice of dishonour by non-acceptance & by non-payment not sufficient.]—An omission to give notice of the non-acceptance of a bill of exchange is not cured by notice of non-acceptance given with notice of non-payment.—*JONES v. WILSON* (1813), 2 R. de L. 28.—*CAN.*

**1611 i.** On dishonour by non-payment.]—A promissory note was payable in 18 months after date, with interest at 7 per cent. *per annum*, payable half yearly:—*Held*: in order to bind the indorser, it was necessary to give him notice of dishonour.—*JENNINGS v. NAPANKE BRUSH CO.*, 4 C. L. T. 595.—*CAN.*

**1611 ii.** —.]—In an action by indorsee against indorser of a promissory note there was no allegation in the statement of claim to show that any notice of dishonour had been given to deft.:—*Held*: in the absence of such averment & proof, pltf. could not recover.—*DARLING v. GILLIES* (1888), 20 N. S. R. (R. & O.) 423; 9 C. L. T.—*CAN.*

**1611 iii.** Separately as payees & indorsers of a note payable at a particular place. The declaration averred a joint indorsement by defts. & a due presentment, "of all which deft. had notice," & the liability of deft.:—*Held*: the declaration was bad, because due notice was not alleged.—*COMMERCIAL BANK v.* (1847), 3 U. C. R. 363.—*CAN.*

**1611 iv.** —Pleading.]—against the indorser of a note:—*Held*: (1) the which, after stating presentment, contained the averment that the maker did not pay, but neglected & refused so to do, of which deft. had notice, was bad; (2) an averment that the note was duly presented for payment & was dis-

honoured, whereof deft. had notice, would be sufficient under the shortened form given in C. L. P. Act.—*BANK OF NOVA SCOTIA v. ESTABROOKS* (1875), 3 Pug. 71.—*CAN.*

**1611 v.** —.]—In *assumpsit* on a promissory note, the declaration contained averments of presentment, non-payment, & due notice, but no allegation of time to the averment of notice:—*Held*: the want of such allegation was no ground of demurrer.—*GIBB v. DEMPSEY* (1852), 3 C. P. 437.—*CAN.*

**1611 vi.** —.]—An allegation in a statement of claim, that the note sued on was presented for payment & protested for non-payment, includes by inference the allegation that due notice of dishonour had been given, & a demurrer for want of such latter allegation should be overruled.—*WOOD v. SMART* (1914), 26 W. L. R. 817.—*CAN.*

**1611 vii.** —.]—*Seemle*: recovery should not be allowed in a division et. against an indorser of a note without proving notice.—*HIDDALE v. JIMSON* (1858), 17 U. C. R. 98.—*CAN.*

**1611 viii.** —.]—Pltf. issued an attachment against deft., as indorser of a bill of exchange, but the affidavit on which the attachment issued did not allege notice of dishonour to deft.:—*Held*: the affidavit did not disclose a cause of action, & was insufficient.—*NICHOLSON v. NOWLIN* (1875), 3 210.—*CAN.*

**1611 ix.** —.]—*KAMMERER* (1902), 1 O. W. R. 425.—*CAN.*

**1611 x.** —.]—In an action on a promissory note, made by & indorsed "The N. C. co. per *Held*: S., if an indorser, was not liable, as there was no notice to him of presentment & non-payment.—*BROWN, (W. A.) & CO. v. NATIONAL COAL CO.* (1917), 11 O. W. N. 309.—*CAN.*

**1611 xi.** —.]—Where in an action

**1612.** —.]—At common law the drawer was not chargeable, unless he had notice of drawee's non-payment in convenient time.—*ALLEN v. DOCKWRA* (1698), 1 Salk. 127; 91 E. R. 119, N. P.

**1613.** —.]—In an action by indorsee against drawer on a bill of exchange, payable May 14, it appeared that upon a promise of payment the indorsee gave the drawer to June 7, when the acceptor failed:—*Held*: there being no notice to the drawer, the loss fell on the indorsee.—*GEE v. BROWN* (1727), 2 Stra. 792; 93 E. R. 851.

**1614.** —.]—In order to charge the indorser of a promissory note, it is not necessary to aver notice of non-payment by the maker.—*HAMILTON v. MACKRELL* (1736), Lee temp. Hard. 322; 95 E. R. 209.

*Annotation*:—*Mentd.* Heylyn v. Adamson (1758), 2 Burr. 669.

**1615.** —.]—Action cannot be brought against the drawer of a bill of exchange till notice of refusal of payment.—*DAGGLISH v. WEATHERBY* (1771), 2 Wm. Bl. 747; 96 E. R. 437.

**1616.** —.]—In an action against the indorser of a bill of exchange it is error & not cured by verdict, if pltf. do not allege notice to deft. of the refusal by the acceptor.—*RUSHTON v. ASPINALL* (1781), 2 Doug. K. B. 679; 99 E. R. 430.

*Annotations*:—*Distd.* Reynolds v. Davies (1796), 1 Bos. & P. 626. *Mentd.* Dalby v. Hirst (1819), 1 Brod. & Bing. 224; Williams v. Germaine (1827), 1 Man. & Ry. K. B. 391.

**1617.** —Second dishonour.]—*PRICE v. DARDILL* (1794), Chitty on Bills of Exchange, 11th ed., p. 241.

the maker & indorser, under 5 Will. 4, c. 1, & 3 Vict. c. 8, pltf. declared in the form given by the later statute, but did not aver notice:—*Held*: pltf. was entitled to judgment against the maker, & the indorser to judgment against him.—*SMALL v. ROOKUS* (1843), 6 O. R. 476.—*CAN.*

**1611 xii.** —.]—Notice of dishonour of a bill of exchange is necessary, before an action can be commenced thereon.—*SMITH v. CLINK* (1893), 3 Terr. L. R.—*CAN.*

**1611 xiii.** —.]—In order to make the drawer of a hundi liable in case of dishonour by the drawee or acceptor thereof, it is necessary for pltf. to show that due notice of dishonour was given to the drawer, or that the drawer did not suffer any damage for want of such a notice.—*AMIRUDDI BEPARI v. BAHADUR KHAN* (1903), 1 L. R. 30 Calc. 977; 7 O. W. N. 878.—*IND.*

**1611 xiv.** —.]—Where the acceptor of a hundi failed to pay the amount of the hundi, & the holder did not give notice of dishonour till after 10 days:—*Held*: the conduct of the holder discharged the drawer.—*ANKARAM BAID v. PIE BUX* (1908), 12 C. W. N. 644.—*IND.*

**1611 xv.** —.]—In case against sheriff for not arresting the drawer of a bill of exchange, of which pltf. was the holder:—*Held*: pltf. should prove that the drawer had due notice of dishonour.—*MURRAY v. DUBLIN SHERIFFS* (1841), Arm. M. & O. 130.—*IR.*

**1611 xvi.** —.]—The indorser of a bill of exchange:—*Held*: discharged, for want of notice of non-payment by the acceptor.—*BURKE v. MOLLOY* (1794), Ridg. L. & S. 145.—*IR.*

**1611 xvii.** —.]—A creditor will not be permitted to prove upon bkpt.'s estate for the amount of bills & notes, if notice of dishonour be not given to bkpt. before bkpcy., or to the assignees afterwards.—*Re MULLEN* (1841), 3 L. Eq. R. 361.—*IR.*

## 252 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 4.—Notice

#### Sub-sect. 1.]

**Knowledge not sufficient.]**—A., being in insolvent circumstances, B. undertook to be a security for a debt owing from A. to C., by indorsing a promissory note made by A. payable to B. at the house of D. The note was so made & indorsed with the knowledge of all parties. Just before it became due B. being informed that D. had no effects of A. in his hands, desired D. to send the note to him B., & said he would pay it. B. having then a fund in his hands for that purpose, it was not presented at D.'s house till 3 days after it was due:—*Held*: C. could not maintain an action against B., on the note, without having used due diligence in giving immediate notice to B. of the non-payment by D., for B. had a right to insist on the strict rule of law respecting the indorser of a note, notwithstanding the particular circumstances of the case.—*NICHOLSON v. GOUTHIT* (1796), 2 Hy. Bl. 609; 126 E. R. 732.

*Annotations*:—*Consd.* Haynes v. Birks (1801), 3 Bos. & P. 599. *Fold.* Esdaile v. Sowerby (1809), 11 East, 114.

Though the indorsers of a bill of exchange had full knowledge of the bkpcy. of the drawer & of the insolvency of the acceptor, before & at the time when the bill became due, & within a day after notice might, but for a mistake of the holders, in due course have reached them, from the holders communicating such their knowledge to the bankers in Liverpool, with whom they had before discounted the bill, & who had transmitted it to the holders in London, yet that did not dispense with such holders giving notice of the dishonour in due time to the indorsers.

It is too late now to contend that the insolvency of the drawer or acceptor dispenses with the necessity of notice of the dishonour (*LORD ELLENBOROUGH, C.J.*).—*ESDAILE v. SOWERBY* (1809), 11 East, 114; 103 E. R. 948.

—*Apld.* Turner v. Samson (1876), 2 Q. B. D. 23. *Reid.* Pickin v. Graham (1833), 1 Cr. & M. 725.

**1620.** ———.]—Where debt. lent his indorsement on a promissory note to the drawer, which note was payable on demand, for the purpose of enabling him to raise money on that security from ptffs., his bankers, who agreed to make advances thereon for 6 months:—*Held*: the bankers, who had renewed their advances at the end of the 6 months without the consent of debt., could not recover upon the note thus indorsed by him, without proof of a regular notice of the dishonour to debt.—*SMITH v. BECKET* (1810), 18 East, 187; 101 E. R. 311.

*Annotations*:—*Reid.* Brown v. Maffey (1812), 15 East, 216; *Free v. Hawkins* (1817), Holt, N. P. 550.

**1621.** ———.]—A few days before a bill of exchange became due, the acceptor informed the drawer that he would be unable to pay it, & said

the drawer must take it up, & gave him part of the amount to assist him in doing so. The drawer received the money & promised to take up the bill. In an action by indorsee against the drawer:—*Held*: latter might nevertheless set up as a defence, that he had not regular notice of its dishonour, but the sum paid him by the acceptor was money had and received to ptff.'s use.—*BAKER v. BIRCH* (1811), 3 Camp. 107, N. P.

*Annotations*:—*Apld.* Pickin v. Graham (1833), 1 Cr. & M. 725. *Distd.* Houlditch v. Cauty (1838), 4 Bing. N. C. 411; *Singer v. Elliott* (1887), 4 T. L. R. 34. *Reid.* Re Brereton, *Ex p.* Bignold (1836), 2 Mont. & A. 633.

**1622.** ———.]—In an action on a bill or note, under a plea of no notice of dishonour ptff. must prove a distinct notice; mere knowledge is insufficient.—*BURGH v. LEGGE* (1839), 5 M. & W. 418; 8 L. J. Ex. 258; 3 Jur. 823; 151 E. R. 177; *sub nom.* BIRD v. LEGGE, 7 Dowl. 814.

*Annotations*:—*Distd.* Campbell v. Webster (1845), 2 C. B. 258; *Killby v. Rochussen* (1865), 18 C. B. N. S. 357. *Held.* Carter v. Flower (1847), 16 M. & W. 743; *Caunt v. Thompson* (1849), 7 C. B. 400; *Pottinger v. Neaves* (1854), 3 W. R. 72. *Mentd.* Sands v. Clarke (1849), 8 C. B. 751.

**1623.** ———.]—Knowledge of the probability, however strong, that a bill of exchange will be dishonoured cannot operate as a notice of dishonour.—*CAUNT v. THOMPSON* (1849), 7 C. B. 400; 6 Dow. & L. 621; 18 L. J. C. P. 125; 12 L. T. O. S. 531; 13 Jur. 495; 137 E. R. 159.

*Annotation*:—*Apld.* Fielding v. Corry, [1898] 1 Q. B. 268.

**1624.** ———.]—Indorsers of a bill are entitled to have actual notice of dishonour by drawer & acceptor.—*Re LEEDS BANKING CO., Ex p.* PRANGE (1865), L. R. 1 Eq. 1; 35 L. J. Ch. 33; 13 L. T. 314; 11 Jur. N. S. 920; 14 W. R. 43.

**1625. To indorser.]**—*Re LEEDS BANKING CO., Ex p.* PRANGE, No. 1624, *ante*.

**1626.** ———.]—Invalid current agreement.]—sit on a promissory note payable 12 months after date to debt., & indorsed by him as a security for the debt of the maker:—*Held*: debt. was entitled to notice of non-payment by the maker, & evidence of a parol agreement at the time of making & indorsing the note, that payment should not be demanded till after the sale of the estates of the maker, could not be received as a waiver of the right to such notice.—*FREE v. HAWKINS* (1817), 8 Taunt. 92; 1 Moore C. P. 535; 129 E. R. 317.

*Annotations*:—*Apld.* Woodbridge v. Spooner (1819), 3 B. & Ald. 233. *Reid.* Moseley v. Hanford (1830), 10 B. & C. 739; *Spartall v. Benecke* (1850), 10 C. B. 212; *Abrey v. Cruz* (1869), L. R. 3 C. P. 37.

Waiver of notice generally, *see* Sect. 4, sub-sect. 8, B, *post*.

**1627.** ———.]—Bill insufficiently stamped.]—The vendee of goods gave in payment an instrument purporting to be a bill of exchange, but it was

1618 I.

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MURRAY, v. L. R. 36. AUB.

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BANK v. MCPHERSON (1860), 4 Nfld. L. R. 462.—NFLD.

**1618 III.** ———.]—The fact that the acceptor has become bkpt., & his bill fell due, does not supersede of regular negotiation & due of dishonour.—*CALDER v. (1808)*, 15 Fac. Coll. 66.—SCOT.

1618 IV. S. P. THOMSON, STILL & Co. MACRI 15 Fac. 68, n. SCOT.

1625 I.

demand.)—It is necessary before action to give notice of dishonour to an indorser of a promissory note payable on demand.—*ROYAL BANK OF CANADA v. KIRK & RUMBALL* (1907), 5 W. L. R. 432 B. C. R. 4.—CAN.

of cheque.)—The maker of a cheque is responsible on it until it is prescribed, & is not entitled to notice or other privileges, unless it be shown that from want of such diligence he had suffered damage, as from the on which it is drawn having failed

(1865), 13 L. C. J. 743.—CAN.



written on a paper which had not affixed to it a sufficient stamp. It was not paid by the acceptor, but the vendor, the indorsee of the bill, did not give any notice of dishonour to the vendee, who was the indorser:—*Held*: the instrument being of no value for want of a sufficient stamp, notice of dishonour was unnecessary.—*CUNDY v. MARRIOTT* (1831), 1 B. & Ad. 696; 9 L. J. O. S. K. B. 70; 109 E. R. 945.

**1628.** — Branch banks indorsing to each other.]—A bill of exchange was indorsed to a branch of the N. bank of Portmadoc, who sent it to the Pwllheli branch of the same bank, who indorsed it to the head establishment in London:—*Held*: each of the branch banks were to be considered as independent indorsees, & each entitled to the usual notice of dishonour.—*CLODE v. BAYLEY* (1843), 12 M. & W. 51; 13 L. J. Ex. 17; 2 L. T. O. S. 123; 7 Jur. 1092; 152 E. R. 1107.

*Apprvd.* Prince v. Oriental Bank Corpn. (1878), 3 App. Cas. 325; R. v. Lovitt, [1912] A. C. *Reid.* Woodland v. Fear (1857), 7 E. & B. 519; Prideaux v. Criddle (1869), 10 B. & L. 515; Fielding v. Corry, [1898] 1 Q. B. 268.

See, also, No. 1715, *post*.

**1629.** To acceptor—Bill payable at particular place—Action against drawer.]—In an action against the drawer of a bill payable at a particular place, it is no defence that no notice of dishonour has been given to the acceptor.—*EDWARDS v. DICK* (1821), 4 B. & Ald. 212; 106 E. R. 915.

*Annotations*:—*Mentd.* Day v. Stuart (1829), 6 Bing. 109; *Re* Ridsdale, *Ex p.* Marson (1838), 3 Deac. 79; Jackson v. Burnham (1852), 8 Exch. 173; Goldsmid v. Hampton (1858), 27 L. J. C. P. 286; Gowan v. Wright (1866), 35 W. R. 297.

See 1882 Act, s. 52 (3).

**1630.** — — — At bank—No effects in banker's hands.]—When the acceptor of a bill of exchange, having made it payable at C. & Co.'s, has not sufficient effects in their hands at the time when the bill becomes due, he is not entitled to notice of its dishonour. *Qu.*: whether, in the case of such an acceptance, any notice be, in any circumstances, necessary.—*SMITH v. THATCHER* (1821), 4 B. & Ald. 200; 106 E. R. 911.

—In an action against the acceptor of a bill payable at a banker's, it is not necessary to prove notice of non-payment to the acceptor.—*TREACHER v. HINTON* (1821), 4 B. & Ald. 413; 106 E. R. 988.

*Annotation*:—*Reid.* Edwards v. Dick (1821), 4 B. & Ald. 212.

**1632.** — — — — —.]—In an action against the maker of a promissory note payable at a

**1636 i.** To surety for Where deft. had guaranteed certain of goods & money, to be made to A. by plff., & plff. took the note of A. for the amount:—*Held*: he could no action against deft. without proving notice of non-payment to deft.—*DRIGGS v. WAITE* (1842), 6 O. S. 310.—*CAN.*

**1636 ii.** — — —.]—Deft. delivered to plff. a note for \$100, made by J., on the back of which deft. signed the following "In consideration of \$100, the payment of the within note":—*Semble*: deft. was not entitled to notice of dishonour.—*PALMER v.* (1873), 1.—*CAN.*

**1636 iii.** — — —.]—Notice of must be averred where deft. is only guarantor of the bill.—*GOLDIE v.* (1841), 1 U. C. R. 423.—*CAN.*

**1636 iv.** — — —.]—Defts. made a joint & several promissory note with H., as sureties for him, payable to plff.:—*Held*: it was no defence for them that plff. neglected to give notice of non-payment by H., of which they ignorant.—*WILSON* 6 A. R. 87.—*CAN.*

**1636 v.** — — —.]—A. applied to defts. in London for a loan of £3,000 for five years, on mgt. of property in New Zealand, & in order to carry out the arrangement got a temporary advance of the £3,000 for 9 months. It was agreed that plff. should be surety for its repayment, & thereupon A. drew a bill for that amount on plff., who it, & it was specially indorsed by & made payable to defts. Plff., on the bill arriving at maturity, tendered the amount to defts., but they refused to

banking house, it is not necessary to prove that he had notice of its dishonour.—*PEARSE v. PEMBERTHY* (1812), 3 Camp. 261.

**i.** To surety for payment—Both drawer & acceptor bankrupt before bill due.]—Upon a guarantee given of the price of goods to be paid by a bill, due notice of the non-payment must be given both to the drawer & guarantee, unless both drawer & acceptor are bkpts. when the bill becomes due.—*PHILIPS v. ASTLING* (1809), 2 Taunt. 206; 127 E. R. 1056.

—*Distd.* Holbrow v. Wilkins (1822), 1 B. & C. 10; *Consd.* Van Wart v. Woolley (1824), 3 B. & C. 439; *Hitchcock v. Humfrey* (1843), 5 Man. & G. 559. *Reid.* Murray v. King (1821), 5 B. & Ald. 165.

**1634.** — — — Who has given bond to secure payment of note—Action on bond.]—The condition of a bond, after reciting that deft. & J. had delivered & indorsed to plff. a bill of exchange, drawn by J. & accepted by A., was, that deft. & J., or either of them, their heirs, etc., should pay, or cause to be paid, to plff., his exors., etc., the sum secured by the bill, within one month after it should become due & payable, in case it should not be then paid by the acceptor, to plff., his exors., etc., according to the tenor of the bill, together with interest from the time the bill became due:—*Held*: to an action on the bond, it was not a good plea, that due notice of the dishonour of the bill had not been given to deft. & J., or either of them.—*MURRAY v. KING* (1821), 5 B. & Ald. 165; 106 E. R. 1153.

—*Reid.* Holbrow v. Wilkins (1822), 2 Dow. & Ry. 59.

**Acceptor bankrupt before bill due—To knowledge of surety.]**—Plffs. sold goods to C. & P., & took their acceptance for the amount, half of which was guaranteed by deft. Before the bill became due, C. & P. became insolvent, of which deft. was then informed, & also that plffs. looked to him for the sum which he had guaranteed:—*Held*: in the circumstances, it was unnecessary for plffs. to give deft. notice of the non-payment of it.—*HOLBROW v. WILKINS* (1822), 1 B. & C. 10; 2 Dow. & Ry. K. B. 59; 1 L. J. O. S. K. B. 11; 107 E. R. 5.

—*Consd.* Van Wart v. Woolley (1824), 3 B. & C. *Reid.* Hitchcock v. Humfrey (1843), 6 Scott, N. R.

**1636.** — — —.]—Where a person, not a party to the bill, guarantees payment by the acceptor, he is not entitled to notice of dishonour.—*HITCHCOCK v. HUMFREY* (1843), 5 Man. & G. 559; 6 Scott, N. R.

accept it, or deliver up the bill to him, & no notice of dishonour was given to plff.:—*Held*: (1) the bill was a collateral security in respect of the agree- for the mgt.; (2) the want of of dishonour was sufficient de- for him to any action which might be brought on it.—*BURNS v. OTAGO & SOUTHLAND INVESTMENT CO., LTD.* (1874), 2 C. A.

—An acceptor failed to retire a bill, the drawer wrote to the holder, promising to see the amount paid in 14 days, & within that time sent a new draft for the amount, at 10 days, on the same acceptor, requesting the holder to get it accepted, & to advise speedily. The second bill was neither accepted nor paid by the drawee, but no notice of dishonour was sent to the drawer for above two

**Sect. 4.—Notice**

. 1 &amp; 2.]

540; 12 L. J. C. P. 235; 1 L. T. O. S. 109; 7 Jur. 423; 134 E. R. 683.

*Annotations* :—**Appld.** *Carter v. White* (1883), 25 Ch. D. 666. **Mentd.** *Pim v. Grazebrook* (1845), 2 C. B. 429.

**1637.** —.].—A party who guarantees the payment of a promissory note, if it be not paid at maturity by the maker, is not entitled to notice of the dishonour of the note.—**WALTON v. MASCAILL** (1844), 13 M. & W. 72; 153 E. R. 30; *subsequent proceedings*, 13 M. & W. 452.

**Refd.** *Barber v. Mackrell* (1892), 67 L. T. 108. **Mentd.** *Bradford Old Bank v. Sutcliffe*, [1918] 2 K. B. 833.

**1638.** —.].—A debtor gave his creditor a bill of exchange accepted by himself, but with the drawer's name left blank. Pltf. at the same time, as a surety, deposited with the creditor certificates of stock in a joint stock co. as collateral security for the debt. Debtor died without the creditor having filled in the name of the drawer, & his estate was insolvent. The bill was never presented for payment, nor was notice given to pltf. of its non-payment:—**Held**: the creditor had not discharged pltf. from his suretyship by his omission to give notice of the non-payment of the bill to pltf.

The rule as to any notice of dishonour applies only to parties to bills of exchange, not to persons who are interested in them, without being parties (*COTTON, L.J.*).—**CARTER v. WHITE** (1883), 25 Ch. D. 666; 51 L. J. Ch. 138; 50 L. T. 670; 32 W. R. 692, C. A.

**Refd.** *Barber v. Mackrell* (1892), 68 L. T. 29. *Re Wolmershausen, Wolmershausen v. Wolmershausen* (1890), 62 L. T. 541; *Chamberlain v. Young*, [1893] 2 Q. B. 206.

**1639.** To person not party to bill—Drawer of substituted bill—Given for residue of dishonoured first bill.].—Where the holder of a bill of exchange upon its being dishonoured received part payment, & for the residue another bill of exchange, drawn & accepted by persons not parties to the original bill, & afterwards sued the drawer & acceptor upon the original bill:—**Held**: it was sufficient for him to prove presentment of the substituted bill to the acceptor for payment, & that it was dishonoured, without proving that he gave notice of the dishonour to the drawer of the substituted bill.—**BISHOP v. ROWE** (1815), 3 M. & S. 362; 105 E. R. 617.

**Mentd.** *Van Wart v. Woolley* (1824), 3 B. & C.

authorising creditor to draw bill—On debtor to such person.].—Where debt. being

years, by which time the utterly insolvent. In holder

was by first

the drawer was freed of the holder.

**WRIGHT** (1829), 8 Sh. (Ct. of Sess.) 124; **SCOT.**

a letter B.

his bank, at 4 months after date, for he, A., would indorse same on presentation. A bill in similar terms at blank in name of the drawer, & no indorsement, was, along with the letter,

to the bank who was bill, but or

made to A. till several days after date of the dishonour. In an action by the bank against A. in default of B.:—**Held**: he was liable for the amount.—**WATT v. NATIONAL BANK OF SCOTLAND** (1839), 14 Fac. Coll. 900. **SCOT.**

**1636** vill. —.].—In an action against a party who guaranteed payment of a bill, to whom notice of dishonour was not given until 22 days after the bill became due:—**Held**: the cautioner was not freed of his obligation by want of notice of dishonour.—**BROWN v. KIRKLAND** (1861), 23 Dunl. (Ct. of Sess.)

**ix.** —.].—H. agreed to accept C.'s promissory note on condition that L. should guarantee payment at maturity by indorsing it as surety, & C. made the note in favour of H. or

indebted to pltf. for goods sold, & C. being indebted to debt., pltf., with consent of debt., drew a bill on C. payable at 2 months, which C. accepted, but afterwards dishonoured:—**Held**: debt. was not entitled to notice of the dishonour, his name not being on the bill.—**SWINYARD v. BOWES** (1816), 5 M. & S. 62; 105 E. R. 974.

*Annotations* :—**Foll.** *Holbrow v. Wilkins* (1822), 1 B. & C. 10. **Distd.** *Camidge v. Allenby* (1827), 6 B. & C. 373. **Refd.** *Van Wart v. Woolley* (1824), 3 B. & C. 439; *Hitchcock v. Humfrey* (1843), 5 Man. & G. 559; *Robson v. Oliver* (1847), 11 Jur. 1056; *Barber v. Mackrell* (1892), 67 L. T. 108.

**Transferor without indorsement—**

**Bill drawn abroad on party in London—Sent to London in payment of goods.].—A.**, residing at New York, having ordered goods of B., residing at Birmingham, sent to B. on account of the goods a bill drawn by C. in New York, upon D. in London, payable to the order of B., but not indorsed by A. B., through his bankers, presented the bill for acceptance to D., who refused to accept, but no notice of the non-acceptance was given until the day of payment, when the bill was presented for payment & dishonoured. C., the drawer, became bkpt. before the bill reached B.'s hands, & never had any funds in the hands of D., the drawee, to meet the bill. In *assumpsit* by B. against his bankers for neglecting to give notice of the non-acceptance:—**Held**: A. not having indorsed the bill, was not entitled to notice of dishonour, & remained liable to B. for the amount of the goods.—**VAN WART v. WOOLLEY** (1824), 3 B. & C. 439; 5 Dow. & Ry. K. B. 374; 3 L. J. O. S. K. B. 51; 107 E. R. 797; *subsequent proceedings* (1830), Mood. & M. 520, N. P.

**1642.** —. —. —. **Approved banker's bill—Dishonour by non-acceptance.].—Pltf.** sold to debts. goods to be paid for, according to the contract between the parties, by cash or "approved banker's bills." Debts. paid for them by an "approved banker's bill," which was dishonoured on presentment for acceptance. They were not parties to the bill, & received no notice of dishonour. In an action against them at the suit of pltf. for the price of the goods:—**Held**: debts' liability was not more extensive than it would have been if they had indorsed the bill, & they were discharged, not having received due notice of dishonour.—**SMITH v. MERCER** (1867), L. R. 3 Ex. 51; 37 L. J. Ex. 24; 17 L. T. 317.

*Annotations* :—**Consd.** *Re British & American Steam Navigation Co., Pearce's Claim* (1869), L. R. 8 Eq. 506.

To whom notice may be given.].—See Subsect. 4, *post*.

order, & L. indorsed it, & it was subsequently indorsed by H. The note having been dishonoured, H. sued L. as surety:—**Held**: L. was liable as surety or aval, though no formal notice of presentment & dishonour had been received by **BROTHERS v. LYONS** (1882) C. A.

**1.** To person not party to bill—Note given by agent for goods sold to principal.].—Pltf. sold to debt. goods, some of which, under debt.'s instructions, were delivered to his agents, A. & Co., who gave to pltf. their note for the amount due to him. The note was dishonoured:—debt. not being a party to the note, there was no necessity to give him notice of dishonour.—



When notice dispensed with.]—See Sub-sect. 8, *post*.

Foreign bill—Whether rules as to notice governed by foreign or English law.]—See Part XVIII., Sect. 7, sub-sect. 2, *post*.

#### SUB-SECT. 2.—BY WHOM NOTICE MAY BE GIVEN.

See 1882 Act, s. 49 (1) (2) (13).

**1643. Holder.]—**Notice of a bill of exchange, or promissory note, being dishonoured, must come from the holder.—TINDAL v. BROWN (1786), 1 Term Rep. 167; 99 E. R. 1033; *affd.* (1787), 2 Term Rep. 186, Ex. Ch.

*Annotations:—*Consd. *Ex p. Barclay* (1802), 7 Ves. 597; *Philpot v. Briant* (1828), 4 Bing. 717. *Dbtd. Chapman v. Keane* (1835), 3 Ad. & El. 193. *Consd. Caunt v. Thompson* (1849), 7 C. B. 400. *Reid. Solarte v. Palmer* (1831), 1 Tyr. 371; *Furze v. Sharwood* (1841), 2 Q. B. 388. *Mentd. Bickord v. Bollman* (1786), 1 Term Rep. 405; *Brown v. Harraden* (1791), 4 Term Rep. 148; *Hopes v. Alder* (1799), 6 East, 16, n.; *Haynes v. Birks* (1804), 3 Bos. & P. 599; *Darblshire v. Parker* (1805), 6 East, 3; *Esdaile v. Sowerby* (1809), 11 East, 114; *Stevens v. Aldridge* (1818), 5 Price, 334; *Williams v. Smith* (1819), 2 R. & Ald. 496; *Pickin v. Graham* (1833), 1 Cr. & M. 725; *Solarte v. Palmer* (1834), 8 Bll. N. S. 874; *Hedger v. Steavenson* (1837), 2 M. & W. 799; *Moule v. Brown* (1838), 4 Bing. N. C. 266; *King v. Bickley* (1842), 2 Q. B. 419; *Duncan, Fox v. North & South Wales Bank* (1880), 6 App. Cas. 1.

**1644. —.]—**Notice, that a bill is dishonoured, to effect a discharge, must come directly from the holder.—*Ex p. Barclay* (1802), 7 Ves. 597; 32 E. R. 240.

*Annotations:—*Reid. *Chapman v. Keane* (1835), 3 Ad. & El. 193. *Mentd. Nash v. De Freville*, [1900] 2 Q. B. 72.

**1645. —.** Notice by drawee not enough.]—Where the holder has been guilty of laches in not giving notice, against the drawer, such notice given by the drawee to the drawer the next day will not suffice for notice by the holder.—*HOPES v. ALDER* (1799), 6 East, 16, n.; 102 E. R. 1190.

**1646. —.** Or some one authorised by him.]—Notice of the dishonour of a bill of exchange must be given to the drawer & indorsers by the holder himself, or some person authorised by him.—*STEWART v. KENNETT* (1809), 2 Camp. 177, N. P. *Annotation:—*Reid. *Chapman v. Keane* (1835), 1 Har. & W. 165.

**1647. —.** Attorney—In name of prior indorser without his authority.]—Pltf., who was holder of a bill of exchange, told his attorney to give notice of the dishonour in the name of a previous indorser. This was done, but without the authority of that indorser:—*Held: a good notice.*—*ROGERSON v. HARE* (1837), Will. Woll. & Dav. 65; 1 Jur. 71.

**1648. —.** Statement that notice on behalf of prior indorser.]—A bill of exchange was drawn by A., indorsed by him to B., & by B. to C., in whose hands it was dishonoured. C.'s

attorney gave notice of dishonour in due time to A., but stated therein, by mistake, that he was directed by B., from whom he had no authority, to apply for payment of the bill:—*Held: the notice of dishonour was sufficient, notwithstanding the misrepresentation, the only effect of which was to give A. every defence against C. that he would have had if the notice had really been given by B.*—*HARRISON v. RUSCOE* (1840), 15 M. & W. 231; 15 L. J. Ex. 110; 7 L. T. O. S. 87; 10 Jur. 142; 153 E. R. 834.

—*Mentd. Rowe v. Tipper* (1853), 13 C. B. 2

**1649. —.** Clerk.]—Assumpsit on bill of exchange against drawer. Plea, no notice of dishonour. Pltf. proved the service of a written notice of dishonour, signed by his clerk, "for T. K., T. R.":—*Qu.:* whether the notice was good.—*KING v. HULME* (1843), 2 L. T. O. S. 266, N. P.

—Foreman—Son.]—Deft. drew his bill on M., who accepted it, & deft. indorsed to D., & D. to pltf. The bill falling due on a Sunday, pltf.'s son presented it on the Saturday to the acceptor, & he refused to pay. Pltf.'s son went & told D. & his foreman; on the same day the foreman told deft. of the dishonour, & on the Sunday, D. also told him of it:—*Held: there was no sufficient notice, there being no sufficient intimation from an authorised person that deft. would be looked to for payment. Semble: a tradesman's foreman was not to be presumed to have authority to give a notice of dishonour for his master.*—*EAST v. SMITH* (1847), 4 Dow. & L. 744; 16 L. J. Q. B. 292; 9 L. T. O. S. 130; 11 Jur. 412.

*Annotation:—*Mentd. *Caunt v. Thompson* (1849), 7 C. B. 400.

**1651. —.** Party authorised to receive payment.]—A bill was placed in the hands of D. for the purpose of receiving payment:—*Held: D. was sufficiently authorised to give a notice of dishonour on behalf of the holder.*—*ROWE v. TIPPER* (1853), 13 C. B. 249; 22 L. J. C. P. 185; 17 Jur. 440; 1 W. R. 152; 138 E. R. 1194.

*Annotation:—*Mentd. *Gladwell v. Turner* (1870), 39 L. J. Ex. 31.

**1652. Indorsee—After indorsing bill over—After delivery.]—**An indorsee, who has indorsed over, & is not the holder at the time of the maturity & dishonour, may give notice at such time to an earlier party, & upon afterwards taking up the bill & suing such party, may avail himself of such notice.—*CHAPMAN v. KEANE* (1835), 3 Ad. & El. 193; 1 Har. & W. 165; 4 Nev. & M. K. B. 607; 4 L. J. K. B. 185; 111 E. R. 386.

*Annotations:—*Appl. *Rogerson v. Hare* (1837), Will. Woll. & Dav. 65. *Consd. Harrison v. Ruscoe* (1846), 15 M. & W. 231. *Expld. East v. Smith* (1847), 8 L. T. O. S. 389. *Consd. Coulcher v. Toppin* (1886), 2 T. L. R. 657. *Reid. Lysaght v. Bryant* (1850), 9 C. B. 46; *Rowe v. Tipper* (1853), 13 C. B.

**1653. Prior indorser—Clerk of—**Notice given by holder to such prior indorser.]—In an action by indorsee against drawer of a bill of exchange, the declaration stated the dishonour of the bill, in

#### PART XII. SECT. 4, SUB-SECT. 2.

**16461. Holder—Or some one authorised by him—Collecting bank.]—**Where a note, indorsed in blank, is left at a bank for collection, notice of dishonour may be given by the bank, though it has no interest in the note.—*HOWARD v. GODARD* (1860), 9 N. B. R. (4 All.) 1.—CAN.

—Where a

for at a the is sent there notice may  
be by 14 C. R. 230.—  
CAN.  
Cashed of.]—  
Notice of the dishonour by the cashier  
of a bank, at which a note has been left

—CAN.

*Indorsee—Before having beneficial interest.]—*In an action by indorsee against indorser of a promissory note, it being omitted to show that pltf., by whom notice of dishonour was given, were then party to or had a beneficial interest in the note, pltf. non-suited, the judge not allowing to recall a witness to prove the  
—*JOHNSTON v. CLINTON* (1841), Arm. M. & O.

## 256 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 4.—Notice of dishonour: Sub-sects. 2, 3 & 4.]**

the usual form, "of which deft. then had notice." Plea, that deft. "had not notice from pltf. of the non-payment of the bill of exchange." It was proved that the indorser received notice of the dishonour from pltf., & that the indorser's clerk & not pltf., gave notice to deft. :—*Held*: sufficient. —*NEWEN v. GILL* (1838), 8 C. & P. 367, N. P.

**1654. — Being solicitor—No proof of interest—Or authority.]**—In an action against the drawer of a bill of exchange one of the intermediate indorsees, who was an attorney, wrote a letter to deft., in which he informed him of the dishonour of the bill, & stated that, unless the amount thereof, with his charges, were paid by a certain time, proceedings would be instituted :—*Held*: that was sufficient evidence of deft.'s having had notice of dishonour, although it was objected that sufficient proof had not been given that the writer, by whom notice was given, had any interest in the bill or any authority to give notice of its dishonour. —*WHITE v. TILBY* (1839), 9 L. J. Ex. 19.

**1655. Indorser—Indorsing over previous blank indorsement—Notice to such prior indorser.]**—Where A. obtained a bill of exchange from B., who indorsed in blank, & A. having indorsed his own name above that of B. forwarded the bill to a third party :—*Semle*: A. was not a competent party to give notice of dishonour to B., & it was no answer to a plea of want of notice of non-payment in an action by such third party against B., to prove that A. gave notice in due time. —*MILES v. BROWN* (1813), 1 L. T. O. S. 34.

**1656. Drawer—Not without proof of authority from plaintiff.]**—Where notice of dishonour had been given to the indorser of a bill of exchange by the drawer, there being no evidence to show that the drawer had given such notice by order or request of pltf., in an action against the indorser :—*Held*: the notice was insufficient. —*LEE v. DREW* 7 L. T. O. S. 116.

**1657. — Who sues as indorsee.]—Assumpsit by** W., as indorsee of a bill, against the indorser. The declaration averred that C. W. drew the bill on J. D., that deft. indorsed it to pltf., & that the drawee did not pay it when due. Plea, that deft. had not due notice of the non-payment. Pltf. was proved to be the drawer, & to have given notice of the dishonour to deft. :—*Held*: deft. not object that pltf. was not competent to give notice of dishonour, on the ground that the C. W. suing as indorsee & the C. W. stated in the declaration to be the drawer were the same person. —*WILLIAMS v. CLARKE* (1847), 16 M. & W. 834; 9 L. T. O. S. 80; 133 E. R. 1429.

**1658. Acceptor.]**—*SHAW v. CROFT* (1798), cited in 1 Sel. N. P., 13th ed., at p. 288.

—*In an action by indorsee against drawer of a bill of exchange it is sufficient to prove that deft. had notice of the dishonour of the bill from the acceptor.*—*ROSHER v. KIERAN* (1814), 4 Camp. 87, N. P.

*Annotation*:—*Consd. Harrison v. Ruscoe* (1846), 15 L. J. Ex. 110.

**1660. Party not knowing whether bill dishonoured.]**—If a party to a bill gives a positive notice of its dishonour, which afterwards turns out to be true, it is immaterial whether he had absolute knowledge of the fact at the time when he gave the notice. —*JENNINGS v. ROBERTS* (1855), 4 E. & B. 615; 24 L. J. Q. B. 102; 24 L. T. O. S. 236; 1 Jur. N. S. 401; 119 E. R. 225.

**Branch bank.]**—*CLODE v. BAYLEY*, No. 1628, ante.

### SUB-SECT. 3.—FOR WHOSE BENEFIT NOTICE ENURES.

*See* 1882 Act, s. 49 (3) (4).

**1662. Subsequent indorser—Notice to drawer or indorser.]**—If the drawer or indorser of a bill of exchange receives due notice of its dishonour from any person who is a party to it, he is directly liable upon it to a subsequent indorser, from whom he had no notice of the dishonour. —*JAMESON v. SWINTON* (1809), 2 Camp. 373, N. P.; *subsequent proceedings* (1810), 2 Taunt. 224.

—*Apld. Chapman v. Keane* (1835), 3 Ad. & El.

**1663. All parties—Notice to drawer by any party.]**—Notice to the drawer of a bill of exchange of its dishonour by any party to the bill, enures to the benefit of all. —*WILSON v. SWABEY* (1815), 1 Stark. 34, N. P.

*Annotations*:—*Apld. Chapman v. Keane* (1835), 3 Ad. & El. *Reid. Rowe v. Tipper* (1853), 22 L. J. C. P. 135.

**1664. — — —.]**—A notice of dishonour given by a party to the bill liable to be sued, or who may be entitled to sue, enures to the benefit of antecedent parties. —*LYSAGHT v. BRYANT* (1850), 9 C. B. 46; 19 L. J. C. P. 160; 14 L. T. O. S. 351; 137 E. R. 808.

**1665. Holder—Notice by any party.]**—The holder of a bill is entitled to avail himself of notice of dishonour given by any party to the bill. —*CHAPMAN v. KEANE* (1835), 3 Ad. & El. 193; 1 Har. & W. 165; 4 Nev. & M. K. B. 607; 4 L. J. K. B. 185; 111 E. R. 386.

*Annotations*:—*Foll. Rogerson v. Hare* (1837), 1 Jur. 71. *Consd. Harrison v. Ruscoe* (1846), 15 M. & W. 231; *Coulcher v. Topplin* (1836), 2 T. L. R. 657. *Reid. East v. Smith* (1847), 8 L. T. O. S. 359; *Lysaght v. Bryant* 9 C. B. 46; *Rowe v. Tipper* (1853), 13 C. B. 249

**Waiver of notice.]**—*See* Sub-sect. 8, B.,

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PART XII. SECT. 4, SUB-SECT. 1665 I.

—Applts. discounted a note, made by P. & indorsed by S., to the C. bank. S. died, leaving resp. for, who proved the will before the note matured. The note fell due on May 8, 1816, & was protested for non-payment being unaware of the death of of prot— note was dated

Applts., who knew of S.'s death before maturity of the note, subsequently took up the note from the bank, & relying upon the notice of dishonour given by the bank, sued resp. :—*Held*: to the benefit of v.



## SUB-SECT. 4.—TO WHOM NOTICE MAY BE GIVEN.

See 1882 Act, s. 49 (8)–(11).

**1666. On bankruptcy of drawer—To drawer—Before appointment of trustee.]—**Notice of a dishonoured bill to bkpt. as drawer before the choice of assignees:—*Held*: good.—*Ex p. MOINE* (1812), 19 Ves. 216; 1 Rose, 303; 34 E. R. 498, L. C.

*Annotations*:—*Consd. Re Cohen, Ex p. Johnson* (1834), 3 Deac. & Ch. 433. *Reid. Rohde v. Proctor* (1825), 4 B. & C. 517; *Re Bellman, Ex p. Baker* (1877), 25 W. R. 454.

**1667. Or trustee.]—***ROHDE v. PROCTOR*, No. 1863, *post*.

**1668. .]**—*Re COHEN, Ex p. JOHNSON*, No. 1864,

**1669. ——— After appointment of trustee.]—**It is sufficient for the holder of a dishonoured bill of exchange to give notice of dishonour to the drawer himself, even though before the dishonour he has been adjudicated bkpt., & a trustee of his property has been appointed.—*Re BELLMAN, Ex p. BAKER* (1877), 4 Ch. D. 795; 46 L. J. Bcy. 60; 36 L. T. 339; 25 W. R. 454, C. A.

**1670. On bankruptcy of indorser—To indorser before appointment of trustee—To trustee after appointment.]—**Where the indorser of a bill becomes bkpt., before it falls due, notice of its dishonour, if occurring before the choice of assignees, must be given to bkpt., if after such choice, to the assignees, to enable the holder to prove.—*Re GANS, Ex p. CHAPPLE* (1838), 3 Deac. 218; 3 Mont. & A. 490; 7 L. J. Bcy. 43, Ct. of R.

**1671. To wife.]—**A person, sent by the holder of a dishonoured bill of exchange, called at the drawer's house the day after it became due, & there saw his wife, & told her he had brought back the bill that had been dishonoured. She said she knew nothing about it, but would tell her husband of it when he came home. The person then went away, not leaving any written notice:—*Held*: sufficient notice of dishonour.—*HOUSEGO v. COWNE* (1837), 2 M. & W. 348; Murp. & H. 51; 6 L. J. Ex. 110; 150 E. R. 790.

*Annotation*:—*Reid. Allen v. Edmundson* (1848), 2 Exch. 719.

**1672. To agent—Having authority to indorse.]—***Semble*: an agent to indorse is also agent to receive notice of dishonour.—*FIRTH v. THRUSH* (1828),

8 B. & C. 387; Dan. & Ll. 151; 2 Man. & Ry. K. B. 359; 6 L. J. O. S. K. B. 355; 108 E. R. 1086.

*Annotations*:—*Mentd. Allen v. Edmundson* (1848), 2 Exch. 719; *White v. Woodward* (1848), 5 C. B. 810; *Kilby v. Rochussen* (1863), 18 C. B. N. S. 357; *Prideaux v.* 10 B. & S.

**1673. To indorser direct—By foreign correspondent of English bank—In London with possession of bill.]—**A banker in London, corresponding with a banker abroad, has the same right, with respect to English bills of his correspondent becoming due while in his hands, as an English banker has with respect to his customer in England; & if such a bill be dishonoured, he may send it, when returned, to his correspondent abroad. *Semble*: if the foreign correspondent be afterwards in London, in possession of the bill, he ought not to send it again to the London banker, but should himself give notice of dishonour to the party who indorsed it to him.—*DALY v. SLATTER* (1830), 4 C. & P. 200, N. P.

**1674. To partner—Bill drawn by another partner.]—**Where a drawer of a bill of exchange is one of the partners of a firm by which it is accepted, the notice which any one of the partners of that firm receives of its dishonour, is notice sufficient to bind the partner who is the drawer; & in such a case it is not necessary to prove that the partnership was in existence at the time the bill became due.—*HILLS v. THOROWGOOD* (1836), 2 Har. & W. 102; 5 L. J. K. B. 214.

*Annotation*:—*Reid. Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639.

**1675. ——— After dissolution of partnership.]—**Where a bill drawn by partners is dishonoured after the dissolution of the partnership, notice of dishonour to the continuing partner is sufficient notice to the retiring partner.

A bill of exchange dated Aug. 11, 1913, & drawn by a partnership firm consisting of B. & K. upon & accepted by a French co. was indorsed to plfss. by the two partners on Aug. 21, 1913, in payment of a previously dishonoured bill. On Aug. 27, shortly after the bill of Aug. 11 was given to plfss., the partnership was dissolved; the assets thereafter belonged to B., who carried on the business in the firm name. B. covenanting with K. to discharge all the debts & liabilities of the firm. Notice of the dissolution & of the fact that B. would discharge the liabilities of the firm was given to plfss. The bill became due on Oct. 11, 1913, & was dishonoured, & notice of dishonour was given

## PART XII. SECT. 4, SUB-SECT. 4.

**1666 l. On bankruptcy of drawer—To drawer—Before bankruptcy—To afterwards.]—***Re MULLEN* (1841), 3 L. R.

**c. ——— To trustee of creditors' deed—After appointment of trustee.]—**When the drawer & indorser of a bill of exchange has assigned his estate by a creditors' deed, & the bill is subsequently dishonoured, notice of dishonour should be given to the trustee of the deed, & if not so given, the holder cannot prove on the estate for the bill.—*Re LEVY'S TRUST ESTATE, Ex p. AARONS* (1871), 3 V. R. 32.—*AUS.*

**d. After death of indorser—To ignorance**  
discounted a note indorsed by bank. S. died before maturity. When the note fell due & was protested for non-payment, the bank, being unaware of the death of S.,

the note was dated. Appls., who knew of S.'s death before maturity, subsequently took up the note from the bank, & relying upon the notice of dishonour given by the bank, sued S.'s exor.:—*Held*: the holders of the note sued upon, when it matured not knowing of S.'s death, & having sent him a notice in pursuance of 37 Vict. c. 47, s. 1, had given good & sufficient  
bind S. & resp. as his  
c. *BOYLE* (1881), 6 S. C.

**1. ——— To**  
OF BRITISH  
A. v. JONES (1851), 8 U. C. R.  
—CAN.

**g. To servant—Outdoor servant.]—**Delivering notice to an indorser by leaving it with an outdoor servant fire-wood, not known & proved to have been an inmate in the family, is insufficient.—*COMMERCIAL BANK v.* 543.—CAN.

**k. To husband—Note indorsed & wife.]—**In an husband & wife, indorsers of a note, a notice of dishonour by letter, addressed & sent to the husband only:—*Held*: sufficient notice to both husband & wife.—*COUNSELL v. LIVINGSTON* (1902), 23 C. L. T. Occ. N. 360; 4 O. L. R. 340; 1 O. W. R. 444.

**l. To firm—Note indorsed by partner in own name only.]—**Where a note was indorsed by deft., member of a firm, in his own name only:—*Held*: the following notice of dishonour addressed to the firm: "P. M. & Co. Gentlemen Take notice that the promissory note," etc., "on which you are indorsers, due this day, remains unpaid. Therefore the holders look to for payment thereof as such indorsers was insufficient.—*BANK OF v. GROVER* (1846) 3 U. C. R. 27.—CAN.

**Sect. 4.—Notice of dishonour: Sub-sects. 4 5,**

by plffs. to B.:—*Held*: the notice of dishonour given by plffs. to B. was a sufficient notice to K. within 1882 Act, s. 49, notwithstanding that the partnership between them had been previously dissolved.—*GOLDFARB v. BARTLETT & KREMER*, [1920] 1 K. B. 639; 89 L. J. K. B. 258; 122 L. T. 588; 64 Sol. Jo. 210.

**1676. To bankers "in need."**—A bill of exchange, the drawer & acceptor of which became bkpt. before it fell due, was indorsed by the L. banking co. to P. & Co., of Liverpool, payable "in need" at a bank in London. When it fell due, it was presented by P. & Co.'s agent in London at the banks notified for payment by the acceptor & indorser, & dishonoured at both banks. P. & Co.'s agent then sent notice of the dishonour, by post, to P. & Co. at Liverpool; & they, by post, sent notice to the liquidator of the L. banking co., which was being wound up. Upon claim against the banking co., under the winding up, in respect of the bill:—*Held*: the indorsement "in need" constituted the bank notified "in need" agents of the indorsers for payment only, & not agents for notice of dishonour generally, & notice to them of dishonour by the acceptor was not notice to the indorsers.—*Re LEEDS BANKING CO., Ex p. PRANGE* (1865), L. R. 1 Eq. 1; 35 L. J. Ch. 33; 13 L. T. 314; 11 Jur. N. S. 920; 14 W. R. 43.

**To persons not parties to instrument.]—See Nos. 1639–1642, ante.**

**When notice dispensed with.]—See Sub-sect. 8, post.**

#### **SUB-SECT. 5.—TIME FOR NOTICE.**

##### **A. When Notice may be given.**

See 1882 Act, s. 49 (12).

**1677. As soon as payment refused.]—**Notice of the dishonour of a bill of exchange or promissory note, may be given the same day it becomes due, as soon as the acceptor or maker has refused payment.—*BURBRIDGE v. MANNERS* (1812), 3 Camp. 103, N. P.

*Annotations*.—*Follid.* Hine v. Allely (1833), 4 B. & Ad. 624. *Reid.* Kennedy v. Thomas, [1894] 2 Q. B. 759. *Mentd.* Morley v. Culverwell (1840), 7 M. & W. 174; Lazarus v. Cowie (1842), 3 Q. B. 439.

**1678. — At early hour.]—**Immediate notice of a bill dishonoured at an early hour, good. Notice of a dishonoured bill to bkpt., as drawer, before the choice of assignees, good.—*Ex p.*

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**1679. —.]—**A right of action does not accrue on a bill of exchange until after the expiration of the whole of the last day of grace, although a right to protest & to give notice of dishonour accrues immediately on refusal of payment.—*KENNEDY v. THOMAS*, [1894] 2 Q. B. 759; 63 L. J. Q. B. 761; 71 L. T. 144; 42 W. R. 641; 10 T. L. R. 572; 38 Sol. Jo. 616; 9 R. 564, C. A.

**1680. On same day as bill dishonoured.]—***Qu.*: whether a notice to the drawer is premature, if given on the same day the bill has been once presented & dishonoured.—*HARTLEY v. CASE* (1825), 4 B. & C. 339; 1 C. & P. 676; 6 Dow. & Ry. K. B. 505; 3 L. J. O. S. K. B. 262; 107 E. R. 1085.

*Annotations*:—*Consd.* Kennedy v. Thomas, [1894] 2 Q. B. 759. *Mentd.* Solarte v. Palmer (1834), 1 Bing. N. C. 194; Swain v. Lewis (1835), 4 Dowl. 261; Boulton v. Welsh (1837), 3 Bing. N. C. 688; Hedger v. Steavenson (1837), 2 M. & W. 799; Norris v. Salomonson (1837), 4 Scott, 257; Furze v. Sharwood (1842), 2 Q. B. 388; Chapman v. British Guiana Bank (1846), 6 Moo. P. C. C. 23; Caunt v. Thompson (1849), 7 C. B. 400; Paul v. Joel (1859), 5 Jur. N. S. 603.

**1681. After failure to pay—Without absolute refusal.]—**Notice of the dishonour of a bill by the acceptor may be given to the other parties, on the same day that the bill has become due, although the dishonour by the acceptor may have been not an absolute refusal, but a mere neglect to pay on presentment.—*CLOWES v. —* (1829), Dan. & Ll. 212; *sub nom.* CLOWES v. CHALDECOTT, 7 L. J. O. S. K. B. 147.

**1682. On presentation at closed place of payment.]—**Where the holder of a bill of exchange drawn upon "P., No. 6 Budge Row," & accepted by him, went to 6 Budge Row, to present it, but found the house shut up, & no one there:—*Held*: notice might be given to the drawers on the day of such dishonour, as in the case of an actual refusal to pay.—*HINE v. ALLELY* (1833), 4 B. & Ad. 624; 1 Nev. & M. K. B. 433; 2 L. J. K. B. 105; 110 E. R. 591.

*Annotations*:—*Apld.* Buckstone v. Jones (1840), 1 Scott, N. R. 19. *Distd.* Sands v. Clarke (1849), 8 C. B. 751.

##### **B. Within what Time Notice must be given.**

See 1882 Act, s. 49 (12) (14).

**1683. Within reasonable time—Question of law.]—**What is reasonable notice to the indorser of non-payment by the maker of a promissory note, or acceptor of a bill of exchange, is a question of law.—*TINDAL v. BROWN* (1786), 1 Term Rep. 167; 99 E. R. 1033; *affd.* (1787), 2 Term Rep. 180, Ex. Ch.

*l. Hopes v. Alder* (1799), 6 East, 16, n.; *v. Parker* (1805), 6 East, 3; *Williams v. Smith* (1819), 2 B. & Ald. 496; *Furze v. Sharwood* (1841), 2 Q. B. 388. *Reid.* Bickerdike v. Bollman (1786), 1 Term Rep. 405; *Brown v. Harraden* (1791), 4 Term Rep. 148; *Haynes v. Birks* (1804), 3 Bos. & P. 599; *Stevens v. Aldridge* (1818), 5 Price, 334; *Moule v. Brown* (1838), 4 Bing. N. C. 266. *Mentd.* *Ex p. Barclay* (1803), 7 Ves. 597;

—CAN.

#### **PART XII. SECT. 4, SUB-SECT.**

**g. On same day as**  
**due.]—**Notice of dishonour of a promissory note may be given to the indorser on the same day as the note becomes due.—*BANK OF NEW SOUTH WALES v. —* 1 N. S. W. L. R. 91.



*Kedalle v. Sowerby* (1809), 11 East, 114; *Philpot v. Briant* (1828), 4 Bing. 717; *Pickin v. Graham* (1833), 1 Cr. & M. 725; *Solarte v. Palmer* (1834), 8 Bl. N. S. 874; *Chapman v. Keane* (1835), 3 Ad. & El. 198; *Hedger v. Stevenson* (1837), 2 M. & W. 799; *King v. Bickley* (1842), 3 Q. B. 419; *Caunt v. Thompson* (1849), 7 C. B. 400; *Duncan, Fox v. North & South Wales Bank* (1880), 6 App. Cas. 1.

**1684.** —.—.—.]—*Semble*: the question of diligence was proper to be left to the jury.—*HILTON v. SHEPHERD* (1796), 6 East, 13, n.; 102 E. R. 1188.

**1685.** —.—.—.]—*Qu*: whether the question of reasonable notice as to the dishonour of a bill of exchange be not a question of fact to be submitted to the jury in all the circumstances of the case.—*HOPES v. ALDER* (1799), 6 East, 16, n.; 102 E. R. 1190.

**1686.** —.—.—.]—In an action by indorsee against indorser of a bill of exchange a witness stated that either 2 or 3 days after the dishonour of the bill, notice was given by letter to deft., notice in 2 days being in time, but notice on the 3rd too late:—*Held*: it could not be left as a question for the jury, whether notice was given in time, although deft. had had notice to produce the letter which would ascertain the time.—*LAWSON v. SHERWOOD* (1816), 1 Stark. 314, N. P. *Annotations*:—*Reid*, *Radakissen & Doss v. Ramehorn Mullik* (1851), 2 C. L. R. 1607, n. *Mentd.* *Brathwaite v. Coleman* (1835), 1 Har. & W.

**Sending clerk to counting-house—During regular hours—Counting-house shut.**—See Nos. 1714 *et seq.*, *post*.

**1687. Persons giving & receiving notice residing in same place—Several indorsers.**—Where a bill of exchange passed through the hands of five persons, all of whom lived in London or the neighbourhood, & the bill when due being dishonoured, the holder gave notice on the same day to the fifth indorser, & he on the next day to the fourth, & he on the next day to the third, & he on the next day to the second, & he on the same day to the first:—*Held*: due diligence had been used.—*HILTON v. SHEPHERD* (1796), 6 East, 13, n.; 102 E. R. 1188.

#### PART XII. SECT. 4, SUB-SECT. 5.

**1689 L. Persons giving & receiving notice residing in same place—Notice given or sent off next day.**—Pltfs. were the holders of a note indorsed by deft., payable at pltfs.' bank on Sept. 15. On Sept. 13 a change of managers of the bank had taken place & the new manager, although the note was in the bank during the whole of the 15th, knew nothing of its existence until the afternoon of the 18th. He then caused the note to be protested & a notice addressed to deft. put in the post office. The notice was placed in a box rented by deft. from the post office authorities before six o'clock on the same afternoon:—*presentment & notice of dishonour.* *UNION BANK v. 4 Man. L. R. 39.*—*CAN.*

—.]—Notice of non-payment mailed in the proper post office between eight & nine o'clock in the evening of the day after protest:—*Held*: sufficient, though the post-mark upon it was of the following day.—*WILSON v. PRINGLE* (1856), 14 U. C. R.

**1689 Ill.** —.—.—.]—A firm drew two cheques upon a Toronto branch of the S. bank in favour of defts. The

cheques were indorsed by defts. & cashed by pltf. bank at one of its branches in Toronto, early in the forenoon of Oct. 1, & were presented by the manager of the branch of the S. bank on Oct. 3, when they were dishonoured. At 11 45 o'clock a.m. on the 4th he sent the cheques to pltf. bank, & on the same day pltf. bank handed the cheques to its notary, who again presented them & protested them. Notices of dishonour were sent to defts. on the 6th, but did not reach them until Oct. 8:—*Held*: the notices of honour

*OF BRITISH NORTH AMERICA v. BANK OF BRITISH NORTH v. ELLIOTT* (1914), 25 O. W. R. O. W. N. 664; 30 O. L. R. 20 D. L. R. 922; 31 O. L. R.

—*CAN.*

—*Deft.* —.—.—.]—to pltf. a bill of exchange drawn by N. S. & Co. & accepted by C. N. & Co. The bill fell due on Dec. 3, which was a Saturday, & on that day pltf. sent his *jeinadar* to C. N. & Co. to present the bill for payment. The bill was taken by A., one of the members of C. N. & Co., who gave a cheque for the amount. Pltf.'s *jeinadar* took the cheque immediately to the bank, but the bank was closed. Thereupon he to C. N. & Co., & demanded

**1688.** —.—.—.]—*Right to notice on same day.*—The holder of a bill is entitled to know, on the day when it becomes due, whether it is honoured or dishonoured.—*Cocks v. MASTERMAN* (1829), 9 B. & C. 902; *Dan. & Ll.* 329; 4 *Man. & Ry. K. B.* 676; 8 L. J. O. S. K. B. 77; 109 E. R. 835.

*Annotations*:—*Consd.* *Leeds & County Bank v. Walker* (1883), 11 Q. B. D. 84; *London & River Plate Bank v. Bank of Liverpool*, [1896] 1 Q. B. 7; *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49. *Reid*, *Mather v. Maldstone* (1856), 18 C. B. 273. *Mentd.* *Roberts v. Tucker* (1851), 20 L. J. Q. B. 270; *Aiken v. Short* (1850), 1 H. & N. 210; *Mather v. Maldstone* (1856), 1 C. B. N. S. 273; *Durrant v. Eccl. Comrs.* (1880), 6 Q. B. D. 234; *Deutsche Bank v. Beriro* (1895), 11 T. L. R. 591; *Morison v. London County & Westminster Bank*, [1914] 3 K. B.

**1689.** —.—.—.]—*Notice given or sent off next day.*—A bill of exchange, all the parties to which resided in the same town, became due on the 4th of the month, when it was presented for payment by the payee's bankers, who returned it to him dishonoured on the 5th:—*Held*: a letter sent by him to the drawer on the 6th was reasonable notice of the dishonour of the bill.

Where the parties to a bill of exchange reside in London or the vicinity, notice of the dishonour of the bill may be sent by the twopenny post.—*SCOTT v. LIFFORD* (1808), 1 Camp. 246; 9 East, 347; 103 E. R. 605.

*Annotations*:—*Reid*, *Hilton v. Fairclough* (1811), 2 Camp. 633; *Gladwell v. Turner* (1870), 39 L. J. Ex. 31. *Mentd.* *The Ripon City*, [1897] 1 P.

**1690.** —.—.—.]—*Too late to be delivered that day.*—In an action by the fourth against the first indorsee of a bill of exchange, all the parties to which resided in London, it appeared that pltf. received notice of the dishonour of the bill from his indorsee on the 20th of the month, & gave notice to his immediate indorser, by a letter put into the twopenny post office on the evening of the 21st, but so late that it was not delivered out till the morning of the 22nd:—*Held*: by such laches pltf. had discharged all the prior indorsers, although in the course of the 22nd notice of the dishonour was given both to the second indorsee & to deft.—*SMITH v. MULLETT* (1800), 2 Camp. 208, N. P.

—*Consd.* *Rowe v. Tipper* (1853), 22 L. J. C. P.

cash. On Monday, Dec. 5, the was presented to the bank for payment, & was dishonoured. Pltf.'s *gomashta* went to deft.'s kotli, & gave notice of the dishonour of the bill & cheque, & asked him to pay the amount of the bill. Deft. asked for the bill, & pltf.'s *gomashta* went to C. N. & Co., & brought back the bill. Deft., seeing the bill was overdue, refused to pay the amount. The cheque was thereupon returned to C. N. & Co., & the bill retained by pltf., who, on Dec. 6, caused written notice of dishonour to be given to deft.:—*Held*: reasonable notice of dishonour was given, whether the bill be taken to have been dishonoured on the Saturday or on the Monday.—*SOMARIMULL v. BHAIRO DAS* (1871) 7 B. L. R. 431.—*IND.*

**1690 v.** —.—.—.]—A., the holder of a bill of exchange, resided at D., & B., the drawer, lived about a mile from the same place, & within the limits of the post office at D. A letter containing a notice of dishonour of the bill, directed to deft. at D., was posted on the day after the dishonour of the bill. No evidence was given by pltf. that it actually reached, or would, in due course, reach deft.'s hands on the day in question:—*Held*: the notice was timely.—*ATKINSON v. THOMPSON* 3 Ir. Jur.

**Sect. 4. of dishonour: Sub-sect. 5, B.]**

135. *Reid. Gladwell v. Turner* (1870), 39 L. J. Ex. 31; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C.

..... pltf., indorsee of a promissory note, the day after it has been dishonoured, writes to deft., the payee & indorser, who lives in the same city, a letter, containing a notice of dishonour, which letter is put into the twopenny post before 8 p.m. on that day, but is not delivered till the day after, of which it bears the post mark 8 a.m., this notice is not in time.—*EDMONDS v. CATES* (1838), 2 Jur. 183.

1692. ———.]—Upon non-payment of a bill, notice thereof, given by an indorser living in Holborn, to an indorser living at Islington by 9 o'clock on the night of the day following the day on which the first indorser knew it, is reasonable notice.—*JAMESON v. SWINTON* (1810), 2 Taunt. 224; 127 E. R. 1062.

*Annotation:—Mentd. Chapman v. Keane* (1835), 3 Ad. & El. 193.

.....]—Notice of the dishonour of a bill of exchange, sent by the twopenny post, is sufficient where the parties live within the limits of the twopenny post, whether near or at a distance from one another, but the letter conveying the notice should be proved to have been put into a receiving house at such an hour that, according to the course of the twopenny post, it would be delivered the day on which the party, to whom it is addressed, was entitled to receive notice of the dishonour of the bill.

Here the letter being put into the receiving house about noon of Mar. 1, it must have reached its destination the same evening, & deft. had information from the holder of the bill of its dishonour, the day after it became due, which is all he could require (*LAWRENCE, J.*).—*HILTON v. FAIRCLOUGH* (1811), 2 Camp. 633, N. P.

1694. ———.]—A bill of exchange became due on Mar. 3, when it was dishonoured. On the 4th notice of dishonour was sent by the penny post; the letter was posted in Holborn, at 4 o'clock in the afternoon, & according to the course of the post, would arrive at its destination before 6 o'clock. A person was called to prove that he had posted the letter, & was about to state the hour at which it would be delivered, when deft. objected to the question being put to the witness, on the ground, that, if evidence were required of that fact, some should have been called from the post office. The under-sheriff considered it immaterial,

because the jury themselves would have a knowledge of the fact:—*Held*: the under-sheriff had improperly excluded evidence.—*GOLDSTONE v. JONES* (1847), 11 Jur. 910.

——— *Bill dishonoured on Saturday.*—*See Nos. 1709 et seq., post.*

1695. Persons giving & receiving notice residing in different places—*Notice by next day's post necessary.*—Where notice of the dishonour of a bill of exchange by the acceptor in London was sent by the post to the holder in Manchester, where the letter was delivered out between 8 & 9 o'clock in the morning, & the post went out for Liverpool, where the drawer lived, between 12 o'clock at noon & 1 o'clock, & the holder did not send notice to the drawer by the post either of the same day or the next, but sent it in a letter by a private person on the latter day, who did not deliver it to the drawer till 2 hours after the post delivery, & only about 1 hour before the post left Liverpool for London, whereby the drawer was so agitated that he could not write in time for that day's post to London:—*Held*: at all events the holder had made the bill his own by his laches, for whether reasonable notice were a question of law or of fact, or whether the general rule of law required notice of the dishonour of a bill to be sent to a party living at another place by the next post after it was received, by which must be understood the next practicable post in point of time & distance, & whether 4 hours between the coming in & going out of the post were a sufficient interval in point of practical convenience to receive the notice & to prepare a letter of advice to the drawer, at all events the holder ought to have written by the post of the next day after notice received by him, & ought not to have delayed the receipt of notice by the drawer until after the arrival of the next post, by sending the letter by a private hand.—*DARBISHIRE v. PARKER* (1805), 6 East, 3; 102 E. R. 1184.

——— *Consd. Bray v. Hadwen* (1816), 5 M. & S. 100. *Trigg v. Newnham* (1825), 1 C. & P. 631. *Reid. Facey v. Hurdon* (1824), 3 B. & C. 213. *Mentd. Hirschfeld v. Smith* (1866), L. R. 1 C. P. 340.

1696. ———.]—The indorsee of a bill lodged it with his bankers in London, who presented it for payment at another banking house, in London, where it was made payable, on Feb. 25, when it was dishonoured, but under a doubt whether the presentation was not made too early on that day, the bankers again presented it shortly before 5 o'clock on the 26th, when it was again dishonoured, on which they immediately returned it to the indorser, in London, on that day, & he sent notice of the dishonour by the post of the 27th,

1695 I. giving in

A note was presented for payment on Mar. 9, at G., where the indorser lived, & the notice was mailed on the following day, but not received at G. until the 13th. *Held*: sufficient.—*TAYLOR v. CAN.*

II. M. bank of holders of promissory

of the bank at agency Deft. re- care of dis- was there, & late of by to

after the on the

matured, the postage on such being duly prepaid in both cases. There was no local delivery by letter carriers from the post office in Summer-side. No evidence was given by deft. that he did not receive the notices of dishonour, nor was any evidence given by pltf. that deft. had received them:—*Held*: the notices were sufficient.—*MERCHANTS BANK OF HALIFAX v. MCNUTT* (1883), 11 S. C. R. CAN.

1695 III. ———.]—A., the holder of a bill of exchange payable at D., at some distance from which A. resided, & the latest post

sent the bill at so on the 3rd of month, & the bill

dishonoured, apprised A. ver- of the fact during the 5th, & A. sent a notice thereof to C., the drawer, who resided in a remote part of the country:—*Held*: (1) in the circumstances of the parties residing far apart from each other, & from the place where the bill was payable, A. was entitled to employ the services of an agent for the purpose of collection, who had a day to give notice as if he had been a party to the bill, & his being a notary public instead of a banker did not alter the case; (2) as a notice from B., the agent of A., his principal, would have been timely if despatched by the post of the 4th, which would not have reached him until the 5th, the verbal communication by B. to A. on the 5th was equivalent thereto, & in good time.—*MORGAN v. OWENS* (1856), 15 L. T. O. S. 480; 2 Ir. Jur. 236.—*IR.*



into the country where the indorser lived :—*Held* : this was due diligence & due notice of the dishonour.—*LANGDALE v. TRIMMER* (1812), 15 East, 291; 104 E. R. 854.

**1697.** —.]—A country banker, with whom a bill of exchange, payable in London, is deposited, has an entire day after receiving notice of its dishonour to transmit same to his customer, so that notice by the next day's post, though it be not the next post, will be time enough.

The indorsee of a bill, payable at a banker's in London, deposited it with his bankers in the country, who caused it to be duly presented for payment on the 14th, when it was dishonoured. Notice was sent by the post to the country bankers on the 15th, which reached them on the morning of the 17th, a Sunday, & they on the next day sent notice by the post to the indorsee, but not before 12 o'clock at noon, at which time the post set out for the place where the indorsee resided :—*Held* : the notice was within time.—*BRAY v. HADWEN* (1818), 5 M. & S. 68; 105 E. R. 976.

*Annotations* :—*Reid. Hawkes v. Salter* (1828), 4 Bing. 715; *Fielding v. Corry*, [1898] 1 Q. B.

**1698.** —.]—Where debt., being indebted to pltf., paid to him the debt in country bank notes on a Friday, several hours before the post went out, & pltf. transmitted them partly by a coach on Saturday & partly by Sunday night's post, & both parts arrived in London on Monday, & were presented for payment & dishonoured on the Tuesday :—*Held* : the true rule was, that a party, in order to avoid laches, must give notice by the next day's post, & not by the next possible post, & pltf., in so transmitting the notes, had been guilty of no laches, & might consider them as no payment, & recover for the original debt.—*WILLIAMS v. SMITH* (1819), 2 B. & Ald. 496; 106 E. R. 447.

*Annotation* :—*Reid. Prideaux v. Criddle* (1869), 10 B. & S. 515.

**1699.** —.]—A bill was presented for payment in London on Apr. 3. On the 4th a letter was written to pltf. informing him of it, which he received on Apr. 6, a Sunday. On the Tuesday evening notice by the post was sent to debt. :—*Held* : pltf. was not bound to open the letter from London till the Monday morning, & taking him to have received notice of the dishonour at that time, he had done quite sufficient in transmitting it to the debt. by the next day's post, & he had been guilty of no laches whatsoever.—*WRIGHT v. SHAWCROSS* (1819), 2 B. & Ald. 501, n.; 106 E. R. 449.

*Annotations* :—*Reid. Hawkes v. Salter* (1828), 4 Bing. 716. *Mentd. R. v. Overton* (1834), 18 Jur. 134.

**1700.** —.]—A party receiving notice of dishonour of a bill of exchange, need not give notice to the party above him till the next post after the day on which he himself receives the notice, although he might easily give it that day,

**1703 i.** —.]—*Notice sent by private hand sufficient—If no essential delay.*—It is sufficient if the indorser receive notice when he would have received it by post, although it was sent to him by private hand, & might have been livered a day  
*O'REILLY*  
*CAN.*

**1703 ii.** —.]—debt. resided about three miles apart; the mail ran between both places, & closed where pltf. resided on

Wednesday, & Friday in each week. bill was presented for payment on lay, the 4th, being the last day of , & not paid; there being no mail on the 5th, notice was served on debt. by a special messenger on the 6th, before it could have reached him had it been mailed on that day :—*Held* : in good time.—*CHAPMAN v. BISHOP* (1852), 1 C.

s. —.]—*Notice sent to post town to be called for—Served same day, as letter called for.*—Debt. lived

& there is no post on the day following.—*GEILL v.* (1827), Mood. & M. 61, N. P.

*Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C.

**1701.** —.]—The law, that one clear day is to be allowed for each step in communications between parties in dealing with bills of exchange, cannot be extended, so as to allow any further time for communications between an agent & his principal in reference to any step.

The holders of a bill of exchange, through their agents in London, presented it at the bank at which it was made payable by the acceptors, & it being dishonoured, they further presented it at the bank at which it had been indorsed payable, "in case of need," by indorsers of the same bill; there also it was dishonoured. The agents, on the same day, sent the bill by post to the holders in Liverpool, who, on the day but one following, sent it to the indorsers :—*Held* : the notice was a day too late.—*Re LEEDS BANKING CO., Ex p. PRANGE* (1865), L. R. 1 Eq. 1; 35 L. J. Ch. 33; 13 L. T. 314; 11 Jur. N. S. 920; 14 W. R. 43.

**1702.** —.]—A bill of exchange, the holder of which resided in Edinburgh, became due on May 5, when it was dishonoured by the acceptor. The bill was in the hands of the C. bank at their office in London. Their manager sent notice to pltf. at Edinburgh, but the clerk could only say "it was posted after 6 o'clock on the evening of May 6," not saying that it was in time to save the post that evening. On May 7, pltf.'s solrs. in London wrote & posted to debt., the drawer, a letter on the part of pltf., informing him that the bill had been dishonoured, & that unless it was paid at once, proceedings would be taken against him. Debt., who resided at Chiswick, which was out of London, though in the same postal district, received the notice on the 8th :—*Held* : the notice was given in good time.—*M'GREGOR v. CARR* (1880), 2 T. L. R. 757, D. C.

**1703.** —.]—*Notice sent by private hand sufficient—If no essential delay.*—The holder of a bill of exchange, which is returned dishonoured, is not bound to send notice to the drawer by the mail, or first conveyance that sets out from the place where such holder resides. It is sufficient, provided that there be no essential delay, if he send notice by a private hand; & although such notice should thereby reach the drawer later in the day than if it had been sent by the mail, he will not on that account be discharged.—*BANCROFT v. HALL* (1810), Holt, N. P. 476, N. P.

*Notice by payee for honour of indorsee residing abroad—Given after writing to & hearing from such indorsee.*—Pltf. having paid a bill of exchange for the honour of an indorsee residing abroad, wrote to & received an answer in the regular course of post from such indorsee, before

miles from a post town, D., where there was no delivery, but letters were kept till called for. Notice of dishonour of a promissory note indorsed by debt. was sent on the day it came from the bank to an innkeeper at D. with instructions to serve it at once. He did not call at the post office for two or three days, when he received the & served it the same day as

the notice was reasonable.  
(1877), Knox. 493.—*AUS.*

**Sect. 4.**

-sect. 5, B.1]

giving notice of dishonour to the drawer:—*Held*: the notice of dishonour to the drawer was in time, although 6 days had elapsed between the payment & notice.—*GOODALL v. POLHILL* (1845), 1 C. B. 233; 14 L. J. C. P. 146; 4 L. T. O. S. 335; 9 Jur. 554; 135 E. R. 528.

**Bill dishonoured on Saturday.]—See Nos. 1700 et seq., post.**

**1706. To remote party**—As promptly as to immediate party.]—Upon the dishonour of a bill, it is not enough that the drawer or indorser receives notice in as many days as there are subsequent indorsees, unless it is shown that each indorsee gave notice within a day after receiving it; as if any one has been beyond the day, the drawer & prior indorsers are discharged.—**MARSH v. MAXWELL** (1809), 2 Camp. 210, n., N. P.

**Reid.** Jones v. Williams (1841), 10 L. J. Ex.  
**Mentd.** Huntley v. Sanderson (1833), 3 Tyr. 469.

**1708.** — — — — —.]—Pltf., the indorser of a bill of exchange which had been dishonoured, & which a subsequent indorser had made his own by laches, paid the bill, & immediately gave notice of dishonour to deft., a prior indorser:— *Held*: pltf. could not recover the amount, although it appeared that deft., in case successive notices had been given by all the parties on the bill, could not have received notice of dishonour at an earlier period.—**TURNER v. LEECH** (1821), 4 B. & Ald. 451; 100 E. R. 1002.

*Annotations:* **Consd.** Huntly v. Sanderson (1833), 3 Tyr. 469. **Refd.** Fielding v. Corry (1897), 77 L. T. 453.

**1707.** — [1827]. — If there are several indorsers of a bill, & the last indorsee & holder resorts in the first instance to the first of such indorsers, he is not entitled to as many days as there are indorsers to give notice of dishonour in, but must give it within the same time as he would have been obliged to do it in, if he had resorted at first to his own immediate indorser.—**DOBREE v. EASTWOOD** (1827), 3 C. & P. 250, N. P.; *subsequent proceedings* (1828), 3 C. & P. 254.

**Annotations:** **Consd.** *Rowe v. Tipper* (1853), 13 C. B. 249.  
**Mentd.** *Stocken v. Collins* (1841), 9 C. & P. 653.

**1708.** -----The holder of a bill of exchange, in order to charge an earlier party to the bill, by notice of dishonour from himself, must send him the notice as promptly as if to his own immediate indorser.---**Rowe v. Tipper** (1853), 13 C. B. 249; 22 L. J. C. P. 135; 17 Jur. 440; 1 W. R. 152; 138 E. R. 1194.

31.

**v. Turner (1870), 39 L. J. Ex.**

1709. Bill dishonoured on Saturday—Persons giving & receiving notice residing in same place—Notice received from bank Monday—Given to indorser Tuesday.—A bill indorsed in blank, by the holder with his bankers, due on Saturday, & was for payment

about 2 o'clock on that day. Payment being refused, the bill was noted & again presented between 9 & 10 o'clock in the evening by a notary. On Monday the bankers informed the holder that the bill was dishonoured, & he on Tuesday about noon gave notice to the indorser. The holder lived at Knightsbridge, & the indorser in Tottenham Court Road :—*Held* : the notice was sufficient to entitle the holder to recover against the indorser. —*HAYNES v. BIRKS* (1804), 3 Bos. & P. 599 ; 127 E. R. 323.

*Annotations* :—**Relf**. Darbyshire v. Parker (1805), 2  
Smith, K. B. 195; Kennedy v. Thomas, [1894] 2 Q. B.

1710. ——— Notice given first indorsee Monday—Notice received by drawer Tuesday.]—A bill of exchange was due on Saturday, & was presented by a notary, & dishonoured. On Monday morning notice of the dishonour was given by the notary to the holder, the first indorsee, who in the evening of the same day gave notice to the drawer by a letter put into the twopenny post so late that it did not reach its destination till the Tuesday morning. All the parties resided in London:—*Held*: the notice was in time.—*POOLE v. DICAS* (1835), 1 Bing. N. C. 649; 7 C. & P. 79; 1 Hodg. 162; 1 Scott, 600; 4 L. J. C. P. 196; 131 E. R. 1267.

*Annotations:—***Reid**, *Morgan v. Owens* (1850), 15 L. T. O. S. 480. **Mentd.** *Marks v. Lahce* (1837), 3 Bing. N. C. 408; *Brain v. Preece* (1843), 11 M. & W. 773; *Doe d. Welsh v. Langfield* (1847), 16 M. & W. 407; *Stapylton v. Clough* (1853), 23 L. J. Q. B. 5; *Smith v. Blakey* (1867), L. R. 2 Q. B. 326; *Pollini v. Gray*, *Sturla v. Freccia* (1879), 12 Ch. D. 411.

1711. ——— Monday being Lord Mayor's day—Verbal notice given Tuesday—Written notice posted Wednesday.]—A bill of exchange was dishonoured on Saturday, Nov. 8. Monday, Nov. 10, was Lord Mayor's day. Verbal notice of dishonour was given on the 11th, & written notice posted on Nov. 12:—*Held*: the notice was not insufficient.—SCARD v. BAILEY (1880), De Colyar's County Court Cases, 98.

1712. — Persons giving & receiving notice residing in different places—[Notice sent by Tuesday morning post.]—A bill was dishonoured on Saturday in a place where the post went out at 9.30 a.m.:—*Held*: it was sufficient notice of dishonour to send a letter by the following Tuesday morning post.—*HAWKES v. SALTER* (1828), 4 Bing. 715; 1 Moo. & P. 750; 6 L. J. O. S. C. P. 180; 130 E. R. 944.

—**Ridd.** *Skilbeck v. Garbett* (1845), 7 Q. B. 846.

1713. ——— Notice received Monday—Given Wednesday.]—B., pltf.'s agent, having money of pltf. in his hands, paid it into deft.'s bank, & received a bill indorsed by deft., which he indorsed & sent to pltf. The bill having been presented for payment on the Saturday, when it became due, & having been dishonoured, pltf. informed B. by a letter, which B. received on the Monday, but B. did not give deft. notice of the dishonour

HURRY (1871), 7 B. L. R. 431.—IND.

1709 Ill. ——— Notice  
Monday.)—An inland bill having  
protected on a Saturday:—Held: 1  
19 & 30 Vict. c. 69, due notice of  
honour was given to the drawer by  
letter posted so as to reach him on  
the Monday &c.

**Sc. Jur.**

holder is drawer of a bill, in the other within

FOURTH 1709 1.

J.)—A promissory note  
 fell due on a Saturday:—Held: it  
 was no objection that the notice of  
 dishonour was dated on Sunday &  
 delivered on the Monday.—BLINN v.  
 DIXON (1848), 5 U. C. R. 380.—CAN.

II. ————— Verbal notice given  
 Monday.—Written notice given Tuesday.)  
 —SOMERHILL v. BEAING DAS JO-



until the Wednesday:—*Held*: deft. was discharged.—*MIERS v. BROWN* (1843), 11 M. & W. 372; 12 L. J. Ex. 290; 152 E. R. 847.

*Annotation*:—*Mentd.* *Caunt v. Thompson* (1849), 7 C. B. 400.

**1714. — Notice sent to wrong address Monday—Mistake corrected by telegram Tuesday.**—The holders of a bill of exchange gave it for collection to a branch bank of a country bank, which had several branches in different places. The branch bank sent the bill to a London bank for collection. The bill was duly presented for payment & was dishonoured on a Saturday. On the following Monday the London bank sent notice of the dishonour by post to the country bank, but by mistake the letter containing the notice was addressed, not to the branch bank from which the bill had been received, but to another branch of the country bank carrying on business in another place. The mistake in the address having been discovered, the London bank on the Tuesday morning sent a telegram addressed to the branch bank from which the bill had been received, notifying that it had been dishonoured:—*Held*: as the two acts of sending the notice by post to the wrong address, but to the right person, & the telegram to the right address when the mistake was discovered, must be treated as one continuing act, due notice of dishonour had been given as required by 1882 Act, s. 49 (12) (b).—*FIELDING & Co. v. CORRY*, [1898] 1 Q. B. 268; 67 L. J. Q. B. 7; 77 L. T. 453; 46 W. R. 97; 14 T. L. R. 35; 42 Sol. Jo. 45, C. A.

**1715. To branch bank.**—The position of branch banks is, that in principle & in fact they are agencies of one principal banking corp'n. or firm, notwithstanding that they may be regarded as distinct for special purposes, e.g., that of estimating the time at which notice of dishonour should be given.—*PRINCE v. ORIENTAL BANK CORPN.* (1878), 3 App. Cas. 325; 47 L. J. P. C. 42; 38 L. T. 41; 26 W. R. 543, P. C.

*Annotations*:—*Reid.* *Fielding v. Corry*, [1898] 1 Q. B. 268. *Mentd.* *Bank of Africa v. Colonial Government* (1888), 13 App. Cas. 215; *R. v. Lovitt*, [1912] A. C. 212; *Sinclair v. Brougham*, [1914] A. C. 398.

*See, also*, No. 1628, *ante*.

**1716. Cheque—Lodged with banker for collection—Notice thereby postponed one day.**—A person receiving a cheque on a banker is equally authorised in lodging it with his own banker to obtain payment, as he would be in paying it away in the course of trade, although in consequence thereof the notice of its dishonour is postponed a day, 1 day being allowed for notice from the payee to the drawee, after the day on which notice is given by the bankers to the payee.—*ROBSON v. BENNETT* (1810), 2 Taunt. 388; 127 E. R. 1128.

*Annotations*:—*Apud.* *Moule v. Browne* (1838), 1 Arn. 79. *Mentd.* *Boddington v. Schlenker* (1833), 1 Nev. & M. K. B. 540.

**1717. — Notice delayed thereafter eight days.**—On Wednesday, May 6, A. received at Monmouth a cheque drawn upon M. & Co., bankers at R., about ten miles distant. On Friday, the 8th, he paid it into his bankers at Monmouth, & they on the same day sent it by post to their London agents, the C. bank, to be passed through the country clearing house there. The drawees' London agents were B. & Co., whose names appeared in a printed memorandum at the foot of the cheque, but their account with them was closed on Thursday, the 7th. The cheque being

refused by B. & Co. at the clearing house, the C. bank sent it by post on Saturday, the 9th, for payment to the drawees, who kept it until Friday, the 15th, & then returned it to the C. bank, who received it on Saturday, the 16th, & sent it by that day's post to their correspondents, the Monmouth bank, who, receiving it on Sunday, the 17th, sent notice of the dishonour by the post on Tuesday, the 19th, to the drawer, whom it reached on the 20th. A run upon the bank of M. & Co. commenced on Monday, the 11th, & on Wednesday, the 13th, at noon, they finally stopped payment. In an action by the Monmouth bank against the drawer, it was proved that the drawees sent cash through the post to country bankers, in payment of cheques drawn upon them, as late as Monday, the 11th, but did not honour any cheques forwarded to them by London bankers after Thursday, the 7th, that if the cheque had been received by them by post from the C. bank on Friday, the 8th, it would not have been paid, but that if presented across the counter at any time before the final stoppage on Wednesday, the 13th, it would have been paid. *Semble*: the notice of dishonour was too late.—*BAILEY v. BODENHAM* (1864), 16 C. B. N. S. 288; 33 L. J. C. P. 252; 10 L. T. 422; 10 Jur. N. S. 821; 12 W. R. 805; 143 E. R. 1139; *sub nom.* *BAYLEY v. BODENHAM*, 4 New Rep. 110.

*Annotations*:—*Mentd.* *Prideaux v. Criddle* (1869), L. R. 4 Q. B. 455; *Heywood v. Pickering* (1874), L. R. 9 Q. B.

**1718. — Notice given day after refusal to return or pay cheque.**—A. drew a cheque on H. & Co., bankers at Falmouth, in favour of deft. on June 4, & deft. paid it into the bank of plffs., his bankers, at Truro on the 5th. On the same day plffs. sent the cheque to B. & Co., their agents in London, who received it on the 6th, & on the same day presented it, through the country clearing house, to H. & Co.'s agents in London. On the same day H. & Co.'s agents forwarded the cheque to H. & Co. at Falmouth, who received it on the 7th. On that day H. & Co.'s agents in London failed. On the 7th B. & Co. wrote to H. & Co. to return the cheque or to pay it. On the 8th H. & Co. wrote, declining to do either, & stopped payment on the following day. Plffs. gave deft. notice of dishonour on the 9th:—*Held*: as the notice of dishonour was given on the day following that on which the cheque was dishonoured, it was given in due time.—*PRIDEAUX v. CRIDDLE* (1869), L. R. 4 Q. B. 455; 10 B. & S. 515; 38 L. J. Q. B. 232; 20 L. T. 695.

*Annotation*:—*Mentd.* *Heywood v. Pickering* (1874), L. R. 9 Q. B.

**1719. Bank note—Bankruptcy of banker—Before presentment.**—Action of debt for money had & received. On Saturday evening, Jan. 19, plff. gave change for a £5 bank note of P. & Co.'s bank, to deft., at his request, & on Monday morning, the banking house of P. & Co.'s was opened for 2 hours & then closed, & the partners afterwards became bkpts. No payments were made, & the jury gave an opinion that if the note had been presented, it would not have been paid. The note was not in fact presented, but on Monday, plff. sent it to deft., & requested to have his money returned, & deft. at first promised to return it, but afterwards refused:—*Held*: the obligation on the holder of a note in such case was to give prompt notice to the person from whom he received it, of the stoppage of the bank, & to tender the note back to him, & plff. had

done all that he was bound to do, & was entitled to recover, although there had been no presentment of the note.—**TURNER v. STONES** (1843), 1 Dow. & L. 122; 12 L. J. Q. B. 303; 1 L. T. O. S. 260; 7 Jur. 745.

*Annotations*:—**Distd.** *Sands v. Clarke* (1849), 8 C. B. 751. **Consd.** *Timmins v. Gibbins* (1852), 17 Jur. 378. **Mentd.** *v. Oliver* (1847), 11 Jur. 1056.

**1720.** ————.]—Debt for goods sold. Fourth plea, that debts delivered to pltf., for & on account of the debt, promissory notes, of which debts were bearers, made by L. & Co., payable to bearer on demand, & that pltf. did not present them within a reasonable time. Fifth plea, that no notice of dishonour was given to debts. Replication, that, before the delivery of the notes to pltf., L. & Co. became bkpts. & unable to pay them, that, at the time of the delivery of the notes, pltf. had no notice or knowledge of L. & Co. having become bkpts. or unable to pay, that, before a reasonable time for presentment had elapsed, pltf. had notice of L. & Co. having become bkpts. or unable to pay, & within a reasonable time after such notice, gave notice to debts of the premises, & being holder of the notes, offered to debts to return them, & requested debts to pay the debt, & that, had the notes been presented to L. & Co., or to any person on their behalf, they would not have been paid. Rejoinder to replication to fourth plea, that debts delivered the notes to pltf. in the *bona fide* belief that they would be paid, that they had not, at the time of the delivery of the notes, or before pltf. offered to return them, any knowledge, or any reason to believe, that L. & Co. had become bkpts. or unable to pay the notes, & that pltf. did not give debts notice of the premises until after the expiration of a reasonable time for presentment:—**Held**: (1) the pleas were good; (2) the rejoinder was no answer to the replication, inasmuch as it was unnecessary for pltf. to give notice of the insolvency of L. & Co. before the expiration of a reasonable time for presentment.

The fifth plea alleges that no notice of dishonour

**1721 I. Foreign bill—Whether notice by first direct & regular mail.]—**A bill was dishonoured in Melbourne on a Monday. Notice of dishonour was

by a mail leaving Melbourne on Tuesday mail had left for on the Monday but by Tuesday's mail

by " " mail due

of dishonour.—**BANK OF DIEMEN'S LAND v. BANK OF** (1869), 6 W. W. & A. B. 178.—**AUS.**

**1721 II.** ————.]—Where a bill, drawn on persons residing in Dublin, for non-payment on Nov. 3 **Held** notice thereof to the who at St. John, in

on Dec. 22 following, was in due time, it appearing the mails Great Britain on the 4th & on Nov. that a notice sent by the mail of the would have reached St. John about 4.—**BANK OF NEW BRUNSWICK v.** (1843), 4 N. B. R. (2 Kerr.) 219.—**CAN.**

**1721 III.** ————.]—A bill drawn in St. John was dishonoured in London on Oct. 18, pltf. not then being the holder; a mail left Liverpool for St. John on Oct. 19, by which pltf. could not have of dishonour, but notice

was given by the next mail on Nov. 4, which was as soon as debt. was entitled to it:—**Held**: *prima facie* the notice was sufficient, & pltf. was not bound to show that he had received due notice from the holder of the bill at the time of the dishonour.—**TARRANT v. WILMOT** 6 N. B. R. (1 All.) 353.—**CAN.**

**1721 IV.** ————.]—Notes made in St. John were protested in London, England, where they were payable. The indorser at Richibucto. Notice of dishonour of the first note was mailed to the indorser at Richibucto, & at the same time, the protest was sent by the holders to an agent at Halifax, instructing him to take the necessary steps to obtain payment. The agent, on the same day that he received the protest & instructions, sent by post, notice of dishonour to the indorser at Richibucto. As the other notes fell due, the holders them & the protests, by the first from London to Canada, to the same agent, at Halifax, by whom the notices of dishonour were forwarded to the indorser, at Richibucto:—**Held**: (1) the sending of the notices of dishonour of the first note direct from London to Richibucto, with the precaution of also sending it through the agent, was an indication that the were not aware of the correct of the indorser, & the fact that

was given by pltf. to debts. To that plea there is the same sort of replication as to the fourth plea. The rejoinder states that pltf. did not give debts notice of dishonour within a reasonable time for presentment. There is no decision, nor is there any principle upon which a decision could be maintained, that when there is an excuse for non-presentment, & the facts which constitute such excuse come to the knowledge of the party before the time for presentment has elapsed, & notice is given to the other party within a reasonable time after, that is not sufficient. If the course had been taken to present the notes, the holder would have had a reasonable time from the dishonour for giving notice of dishonour; & this appears to me to stand upon the same principle (**PATTESON, J.**).—**ROBSON v. OLIVER** (1847), 10 Q. B. 704; 16 L. J. Q. B. 437; 9 L. T. O. S. 197; 11 Jur. 1056; 116 E. R. 268.

*Annotation*:—**Mentd.** *McDonnell v. Murray* (1860), 1 L. T. 498.

**1721. Foreign bill—Notice sent by first direct & regular mail.]—**It is sufficient, if notice of a bill, drawn in England on a person in the East Indies, being dishonoured, is sent to England by the first direct & regular mode of conveyance, whether it be by an English or a foreign ship, & the holder is not bound to send such notice by the accidental, though earlier conveyance of a foreign ship not destined to England.—**MUILLMAN v. D'EGUINO** (1795), 2 Hy. Bl. 565; 126 E. R. 705.

*Annotations*:—**Ratd.** *Darbishire v. Parker* (1805), 6 East, 3; *Goupy v. Harden* (1816), 7 Taunt. 159; *Fry v. Hill* (1817), 7 Taunt. 397; *Mellish v. Rawdon* (1832), 9 Bing. 416; *Ranchurn Mullick v. Luchmeechund Radakissen* (1854), 9 Moo. P. C. C. 46; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526.

**Notice duly addressed & posted—Presumption from.]—**See Sub-sect. 6, B, *post*.

#### *C. Excuses for Delay in giving Notice.*

See 1882 Act, ss. 49 (12), 50 (1).

**1722. Absence of indorser from place of business—If given at first reasonable opportunity thereafter.]—****Semble**: the holder may, if he pleases,

they used the proper address was not conclusive of their knowledge or sufficient to compel an inference imputing such knowledge to them; (2) the notices in respect to the other notes, sent through the agent, were sufficient.—**FLEMING v. MCLEOD** (1907), 39 S. C. R. 290.—**CAN.**

**1721 v.** ————.]—Ordinarily notice of the dishonour of a bill of drawn in India, & payable in En should be posted by the first mail which leaves England after the dishonour of the bill.—**UNCOVENANTED SERVICE BANK v. DUFFIN** (1867), 3 N. W. 99.—**IND.**

**w. Due date extended.]—**The due date of a promissory note was, with the consent of the indorser, extended, but no alteration was made on the note **H.** notice of dishonour of the note had to be given on the due date according to the note, & no further notice was required.—**HUM- v. BREDELL** (1913), T. P. D.

#### **PART XII. SECT. 4, SUB-SECT. 5.**

**a. Absence of indorser from—Appointment to temporary.** **Held**: the fact of an indorser being appointed to a temporary office in a place where he went alone, leaving his family for some time afterward in



elect to treat the absence of the indorser from his place of business as extending the time for giving notice, & a notice of dishonour given at the place of business is in time, if given at the first reasonable opportunity afterwards, & proof of its having been so given will support an averment of due notice having been so given.—*ALLEN v. EDMUNDSON* (1848), 2 Exch. 719; 17 L. J. Ex. 291; 154 E. R. 680.

*Annotations*:—*Consd.* Studdy v. Beesty & Higgins (1889), 60 L. T. 847. *Repld.* Paul v. Joel (1859), 7 W. R. 287.

**1723. Ignorance of drawer's or indorser's address—Provided due diligence used to ascertain same—Due diligence question of law.**—What is due diligence in finding out the residence of the indorser of a promissory note, is a question of law.—*STURGES v. DERRICK* (1810), Wight. 76; 145 E. R. 1180.

**1724. — — — Due diligence question for jury.**—The want of due notice of the dishonour of a bill is answered by showing the holder's ignorance of the place of residence of the prior indorser, whom he sues; & whether he used due diligence to find out the place of residence is a question of fact to be left to the jury.—*BATEMAN v. JOSEPH* (1810), 12 East, 433; 2 Camp. 461; 104 E. R. 169.

*Annotations*:—*Follid.* Browning v. Kinnear (1819), Gow, 81. *Consd.* Firth v. Thrush (1828), 8 B. & C. 387. *Repld.* Berridge v. Fitzgerald (1869), L. R. 4 Q. B. 639.

**1725. — — — Letter misdirected.**—If the notice of dishonour sent to the drawer of a bill arrives too late through misdirection, it is for the jury to say whether the holder used due diligence to find the drawer's address.—*SIGGERS v. BROWN* (1836), 1 Mood. & R. 520, N. P.

**1726. — — —** In an action by a second or subsequent indorser the allegation that due notice of dishonour has been given means that it has been given by the holder at the time it was due, not by pltf., & the question will be whether there was due diligence on the part of the holder to discover the address of the drawer or indorser.—*HAWKINS v. HILL* (1862), 3 F. & F. 262, N. P.

**1727. — — — Inquiries where bill payable not enough.**—To excuse the not giving of regular notice of the dishonour of a bill of exchange to the indorser, it is not enough to show that the holder, being ignorant of his residence, made inquiries upon the subject at the place where the bill was payable.—*BEVERIDGE v. BURGIS* (1812), 3 Camp. 262, N. P.

*Annotation*:—*Repld.* Burmester v. Barron (1852), 16 Jur. 314.

**1728. — — — Ignorance of the place of residence of the drawer of a bill of exchange is a**

sufficient answer to an objection arising out of the want of due notice of the dishonour of the bill, provided due diligence be used to discover his place of residence.—*BROWNING v. KINNEAR* (1819),

**1729. — — — Inquiry by holder from servant—Notice given as soon as answer received.**—Where the traveller of A., a tradesman, received in the course of business a promissory note, which he delivered to his master without indorsing it, & the note having been returned to A. dishonoured, the latter not knowing the address of the next preceding indorser, wrote to his traveller, who was then absent from home, to inquire respecting it:—*Held*: A. was not guilty of laches, although several days elapsed before he received an answer & gave notice to the next party, as he had used due diligence in ascertaining his address.—*BALDWIN v. RICHARDSON* (1823), 1 B. & C. 245; 2 Dow. & Ry. K. B. 285; 107 E. R. 91.

**1730. — — — How proved.**—If a letter, giving notice of the dishonour of a bill, contain the following passage: "I did not know till within these few days, where you were to be found," such passage is not to be taken as proving that the notice was not given on the next day after the residence of the party was discovered.—*KERRY v. ENGLAND* (1826), 2 C. & P. 300, N. P.

**1731. — — — How pleaded.**—In an action on a bill of exchange, where the declaration alleges that notice of dishonour was given to deft., it will satisfy the allegation to show that notice was given before action brought, although, from the party's not being to be found, it was not given at the proper time. *Sequib*: such an allegation is not satisfied by proof of the use of due diligence in endeavouring to find the party, where no notice has been given at all.—*HARRIS v. —* (1831), 4 C. & P. 522, N. P.

**1732. — — — Inquiry from another indorser—Notice given as soon as answer received.**—At the trial of an action by indorsee against drawer of a bill of exchange, in which deft. traversed the notice of dishonour, the bill was not produced, but it appeared that it was drawn on May 16, payable at 3 months, that on Aug. 22 it came to pltf.'s hands in due course, from London, & not knowing deft.'s address he wrote for it to another indorsee, & on the day he received an answer sent a notice of dishonour to deft.:—*Held*: sufficient evidence to warrant the jury in finding for pltf.—*DIXON v. JOHNSON* (1855), 1 Jur. N. S. 70.

**1733. — — —** A bill of exchange drawn by deft. on & accepted by W. & indorsed to

the domicile occupied by him at the time of his appointment, did not effect a change of domicile, & notice of protest left at such domicile was good.—*RYAN v. MALO* (1861), 12 L. C. R. 8.—*CAN.*

**1723 i. Absence of indorser from address specified in note.**—Delay in giving notice of dishonour of a promissory note:—*Held*: not to have been caused by circumstances beyond the holder's control, although on the day of the dishonour of the note the holder went to the address of the indorser specified in the body of the note, but failed to find him there, & it was not until eight or ten days later that the indorser was found & the notice of dishonour given him.—*DOWLER v. EDWARDS*, [1918] 2 W. W. R. 345; 13 Alta. L. R. 259; 40 D. L. R. 180.—*CAN.*

**1723 i. — — — Provided due diligence used to ascertain same.**—C. arr. pltf. two promissory notes, the first to be indorsed by some person approved by pltf.'s bankers. C. then wrote pltf. stating that V. would indorse the notes, & the manager at the N. bank at Wanganui would be able to give them the necessary information as to V.'s stability. Pltf., through their bank, made inquiries from the Wanganui manager of the bank, & received satisfactory information as to the position of V. They thereupon accepted his indorsement. Both n were dishonoured. Pltf., through their bank, sent notices of dishonour in time addressed to V. at Wanganui. V. a banking account at Wanganui,

but he resided at Wellington, & principal place of business was Wanganui. Pltf. made no inquiries as to his address, but assumed that he was at Wanganui. V. did not either of the notices: pltf. had not used due diligence to find V.'s address, & had not given him due notice of dishonour, & he was charged from liability on the *ABRAHAM & WILLIAMS, LTD. v. CAMPBELL* (1908), 28 N. Z. L. R. 91.—*N.Z.*

*used to ascertain*

—Deft. had a house in M. where his family lived, & where he resided in the winter, but during the rest of the year, from May till about the end of Dec., he carried on business at L., & resided at

**4.—Notice of dishonour: Sub-sect. 5, C.; sub-sect. 6, A. & B.]**

S., & by S. indorsed to pltf., was presented to W. for payment at maturity & dishonoured. All the parties to the bill lived in London. The morning after its dishonour pltf., who did not know where deft., the drawer, lived, applied to S. for information on the point. S. was from home, but at 5.30 o'clock in the afternoon pltf. went to him again, & having obtained the address of deft., posted his notice of dishonour the same evening, but not till after 6 o'clock. The consequence was that it was not received that night, as it would have been in the ordinary course of post if posted before 6 o'clock. In an action by pltf. as indorsee against the drawer, the jury found that pltf. had exercised a reasonable amount of diligence in giving notice of dishonour:—*Held*: although it was not given in sufficient time to reach the drawer on the day after the bill had been dishonoured, it was not, in the circumstances, too late.—(GLADWELL v. TURNER (1870), L. R. 5 Exch. 59; 39 L. J. Ex. 31; 21 L. T. 674; 18 W. R. 317.)

**1734. — Whole conduct to be considered.]**

—Where there has been fair & reasonable diligence used to obtain the address of the party to be charged with notice, the holder is not bound by a nice calculation of days, but his whole conduct is to be considered, with reference to the question, whether he has used due diligence or not.

Where a bill was drawn at Frome, indorsed by deft., whose address was not known, & the holder took the chance in Aug., when the bill became due, of writing to deft. at Frome, where the drawer lived, & on Oct. 10, inquiries having been made in the interim, pltf.'s attorney found out the address, saw pltf., & received his instructions on the 17th, & wrote on the 18th:—*Held*: this sufficiently proved the allegation of due notice.—FIRTH v. THURSH (1828), 8 B. & C. 387; Dan. & L. 151; 2 Man. & Ry. K. B. 359; 6 L. J. O. S. K. B. 108 E. R. 1086.

*Consd.* Killby v. Rochussen (1865), 18 C. B. N. S. 367. *Reid.* White v. Woodward (1848), 5 C. B. *Mentd.* Allen v. Edmundson (1848), 2 Exch. 719; v. Criddle (1869), 10 B. & S. 515.

**1735. — Must inquire promptly.]**—An indorsee of a bill of exchange, ignorant of the drawer's address, & so unable to give him notice of the dishonour of the bill, is bound to make inquiry for the address promptly on the bill being dishonoured, if he means to hold the drawer liable.—CHAPCOTT v. CURLEWIS (1843), 2 Mood. & R. 484, N. P.

Letter sent to director indorsing at company's address.]—Pltf. having supplied goods in the way of trade to a co., was about to sue the co., but agreed to take a bill of exchange for the amount accepted by the co., if two of the directors indorsed it. Pltf. attended at the office of the co., & a bill was drawn on the co., & accepted on

behalf of the co. by the manager, & deft. & another director, both of whom were in the habit of attending at the co.'s office, put their names to the bill as indorsers. When the bill became due it was not paid, the co. being then in progress of being wound up, & pltf., not knowing deft.'s residence, immediately sent a notice of dishonour addressed to deft. at the office of the co., but deft. did not receive it till long after, having ceased to attend there on the co. becoming embarrassed:—*Held*: in the circumstances, the notice of dishonour was good.—BERRIDGE v. FITZGERALD (1869), L. R. 4 Q. B. 639; 10 B. & S. 668; 38 L. J. Q. B. 335; 17 W. R. 917.

**1737. Defendant inducing plaintiff to send notice to wrong address.]**—A. sued B. on a bill of exchange, the defence being that there had been no notice of dishonour. A., who knew Y. to be the real address of B., proved at the trial that B. had told him to send the notice to X., while B. contradicted that evidence. The fact was, that A. sent the notice to X., & it did not reach B. before the writ was served:—*Held*: the proper question for the jury was, whether they believed that B. had told A. that the notice, if sent to X., would be sufficient.—POTTINGER v. NEAVES (1854), 3 W. R. 72.

**1738. Indistinctness of drawer's writing on bill.]**—Where notice of dishonour reaches the drawer of a bill too late, having first by mistake been sent to a wrong person, & such mistake arose from the indistinctness of the drawer's writing on the bill, he is not discharged.—HEWITT v. THOMSON (1836), 1 Mood. & R. 543, N. P.

Proof of notice, see Sub-sect. 7, post.

**1739. Ignorance of exact whereabouts of ship—Inquiry at river without success—Letter addressed to drawer as master of vessel at port or river.]**—In pursuance of a contract for the supply of bunker coal, made between the owners of a steamship, as buyers, & the agents of the suppliers of the coal at Colombo, as sellers, deft., the master of the steamship, drew a bill of exchange on the owners of the vessel in favour of the suppliers. The bill was duly accepted in London, but on presentation for payment at maturity on a Saturday was dishonoured. Pltf.s, holders of the bill, learnt through their bankers on the Monday that the bill was not paid, & having communicated with the agents of the suppliers of the coal, ascertained that the vessel had arrived in the Tyne, but not knowing in what part, they made further inquiries without success, & on the following Thursday sent deft. notice of dishonour by registered letter, addressing him as master of the vessel at Newcastle-on-Tyne:—*Held*: deft. was not discharged by reason of the delay in giving notice of dishonour, as the special circumstances excused that delay within 1882 Act, ss. 49, (12), 50 (1).—THE ELMVILLE, CEYLON COALING CO., LTD. v. GOODRICH, [1904] P. 319; 73 L. J. P. 104; 91 L. T. 151; 9 Asp. M. L. C. 606.

the house of B., where notices of dishonour had been left there for him, in Jan., 1857, a clerk in the bank, had the same

left a of to he never received. I. for 1. about three weeks of the had used due

& in giving the notice of *Held*: the direction was right.—PATTERSON v. TAPLEY (1860), 4 All.

17371. to

asked by pltf.'s agent gave an erroneous direction, 's agent wrote in pencil under the of non-payment sent to such was

sufficient.—VAUGHAN v. ROSE (1851),

173711. —.]—A. gave a creditor his note, indorsed by deft., stating that deft. lived at L.:—*Held*: (1) A. must be considered as the agent of the in- r, & his statement

necessary, & a notice mailed to L. was sufficient; (2) the above facts supported an allegation of due notice.—McMURCH v. POWERS (1852) 10 U. C. R. 481.—CAN.



**1740. Public festival—Party forbidden by religion to attend to affairs.]**—The holder of a bill of exchange is excused for not giving notice of its dishonour in the usual time, by the day on which he should regularly have given notice being a public festival, during which he is strictly forbidden by his religion to attend to any secular affairs.—*LINDO v. UNSWORTH* (1811), 2 Camp. 602, N. P.

**Delay or loss in post.]**—See Sub-sect. 6, B., *post*.

#### SUB-SECT. 6.—HOW NOTICE MAY BE GIVEN.

##### A. In Writing or by Personal Communication.

See 1882 Act, s. 49 (5) (7).

**1741. By letter—Delivered at house of person paying away bill.]**—A letter delivered at the house of a person who has paid away a bill or note, informing him of the non-payment, is sufficient notice.—*STEDMAN v. GOOCH* (1793), 1 Esp. 3, N. P.

*Annotations:—Mentd.* Dutton v. Solomonson (1803), 3 Bos. & P. 582; Hickling v. Hardey (1817), 1 Moore, C. P. 61; Mallard v. Argyll (1843), 6 Man. & G. 40; Price v. Price (1847), 16 M. & W. 232; Nicholl v. Thomas (1850), 2 Rob. Eccl. 157; Belshaw v. Bush (1851), 11 C. B. 191; *Re* London, Birmingham & South Staffordshire Banking Co. (1865), 34 Beauv. 332.

**1742. — Sent by special messenger—Costs of.]**—Where it is necessary or more convenient for the indorsee to send notice, by other conveyance than the post, to the indorser or drawer of the non-payment of a bill of exchange, he is entitled to do so & charge for same. *Semble*: the jury will judge of the propriety of the charge & of the

It was rightly left to the jury, if it was left to them to say whether the special messenger was necessary, & also whether the charge was reasonable (LORD ELLENBOROUGH, C.J.).—*PEARSON v. CRALLAN* (1805), 2 Smith, K. B. 401.

Measure of damages generally, see Part XIII., Sect. 10, *post*.

— Sent by post.]—See Sub-sect. 6, B., *post*.

**1743. By verbal statement.]**—*MARTIN v. MANGEON* (1851), 18 L. T. O. 8.

**1744. — Sending clerk to counting-house—During regular hours—Counting-house shut.]**—The only notice of dishonour of a bill was by a clerk of

a. *Difficulty of owing to winter season.*—Deft., the drawer of a bill of exchange, drawn in Toronto on a party in New York, got notice from the holder, who lived in Illinois, through his agent in Upper Canada of the bill being unpaid, by the latter calling upon him with the bill on Dec. 24. The bill was protested in New York on Nov. 10, was returned to Illinois & took eighteen days longer to reach deft. than an earlier bill:—*Held*: having regard to the fact that the payee lived in the interior of Illinois, the delay was sufficiently accounted for by the difference of the seasons, *e.g.*, rapid communication by the lakes & rivers, in steamers, being closed. *JOSEPH* (1859), 7 U. C. R.

#### PART XII. SECT. 4, SUB-SECT. 6.

d. *General rule.*—It is not necessary that the notice of

be in writing; it is quite sufficient if it be given in due time, & promptly after dishonour.—*GUY v. KEARNEY* (1842), 11 M. & W. 10.

1. *By verbal statement.*—Notice of dishonour may be given verbally. *BELL v. COOK* (1920), C. P. D. 125.

1. *At what place—Place of residence or of business.*—It is not necessary to give the drawer of a bill of exchange notice of dishonour at the place where he actually resides; notice at his ordinary place of business is sufficient.—*DOOLAN v. WALPOLK* (1841), 2 Leg. Rep. 18.—*IR.*

It is intended to designate a place, which notice of dishonour may be given other than the place at which the bill or note is dated, it is sufficient if the name of a place is written under or beneath the signature of the party. "Under his signature" does not mean

the indorsee, who went to the counting-house of the indorser, found the counting-house shut up, & no person there, but saw a servant girl, who said nobody was in the way, & he then returned, without leaving any message:—*Held*: if the jury thought the indorser was bound to have somebody there, the notice was regular.—*GOLDSMITH v. BLAND* (1800), cited in *CROSSE v. SMITH* (1813), 1 M. & S. 545.

*Annotations:—Apld.* *Crosse v. Smith* (1813), 1 M. & S. 545. 1. *Allen v. Edmundson* (1848), 2 Exch. 719.

**1745. — Notice to drawers of non-payment of a bill of exchange by sending to their counting-house, during hours of business on 2 successive days, knocking there, & making noise sufficient to be heard by persons within, & waiting there several minutes, the inner door of the counting-house being locked, is sufficient, without leaving a notice in writing, or sending by the post, though some of the drawers live at a small distance from place.**—*CROSSE v. SMITH* (1813), 1 M. & S. 545; 105 E. R. 204.

*Annotations:—Folld.* *Allen v. Edmundson* (1848), 2 Car. & Kir. 547. *Reid.* *Harris v. Richardson* (1831), 4 C. & P. 522.

**1746. — Notice of dishonour of a bill of exchange given at the counting-house of a merchant or manufacturer between the hours of 6 & 7 o'clock in the evening is not too late.**—*BANCROFT v. HALL* (1816), Holt, N. P. 476, N. P.

Time for notice generally, see Sub-sect. 5, *ante*.

**1747. — To drawer's wife.]**—*HOUSEGO v. COWNE*, No. 1671, *ante*.

**1748. — To acceptor's executor—Who was drawer.]**—*CAUNT v. THOMPSON*, No. 1825,

— Sufficiency of.]—See Sub-sect. 6, C.,

##### B. By Post.

See 1882 Act, s. 49 (15).

**1749. "Duly addressed & posted"—Letter posted at proper time.]**—The putting a letter into the post office to the indorser in proper time, informing him that the maker has not paid a note when due, is sufficient evidence of notice to the indorser.—*HAUNDERSON v. JUDGE* (1795), 2 Hy. Bl. 509; 126 E. R. 675.

*Annotations:—Reid.* *Parker v. Gordon* (1806), 7 East, 385; *Bailey v. Porter* (1845), 14 M. & W. 44. *Mentd.* *Callaghan v. Aylett* (1811), 3 Taunt. 397; *Fenton v. Goundry* (1811), 13 East, 459; *Howe v. Young* (1820), 2 Bll.

that the name of the place must be written by the party's own hand; it may be written by another person, if that other person had in any manner any kind of authority from the party to write it.

Where a place has been so designated by any party, the holder of the instrument may send notice to that place, even if he has reason to think, or even knows, that such place is not the party's place of residence or place of business.—*HAY v. BURKE* (1889), 16

#### PART XII. SECT. 4, SUB-SECT. 6.

**1749 i. "Letter posted at proper time."—A letter deposited in the post office of Toronto, for any indorser residing there, is as good as if left at his residence.**—*COMMERCIAL BANK v. ECOLES* (1847), 4 U. C. R. 336.—*CAN.*

## 268 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 4.—Notice of dishonour: Sub-sect. 6, E

**1750.** ———.—]—Notice of the non-acceptance or non-payment of a bill of exchange is sufficiently given, by proving that a letter was regularly put into the post, informing the party of the fact.—*KUFH v. WESTON* (1799), 3 Esp. 54, N. P.

**1751.** ———.—]—*Qu.*: whether or not the fact of putting a letter into the post office, containing notice of the dishonour of a bill to the drawer, to whom it was directed, be of itself sufficient evidence to be left to the jury that such notice reached the drawer.—*PARKER v. GORDON* (1806), 7 East, 385; 6 Esp. 41; 3 Smith, K. B. 358; 103 E. R. 149.

*—Mentd.* *Callaghan v. Aylett* (1810), 2 Camp. 549; *Elford v. Teed* (1813), 1 M. & S. 28; *Gannon v. Schmoll* (1814), 5 Taunt. 344; *Garnett v. Woodcock* (1816), 1 Stark. 475; *Rowe v. Young* (1820), 2 Bll. 391; *Triggs v. Newnham* (1825), 10 Moore, C. P. 219.

**1752.** ———.—]—*Insufficiently addressed.*—A letter directed, "Mr. H., Bristol," containing notice of the dishonour of a bill, was proved to have been put into the post office:—*Held*: that was not sufficient proof of notice, the direction being too general to raise a presumption that the letter reached the particular individual intended.—*WALTER v. HAYNES* (1824), Ry. & M. 149, N. P.

*Annotations*:—*Conad.* *Watts v. Vickers* (1916), 86 L. J. K. B. 177. *Reid.* *Clarke v. Sharpe* (1838), 1 Horn & H. 35; *Sheldon v. Fletcher* (1847), 17 L. J. C. P. 31.

**1753.** ———.—]—*Addressed as bill dated.*—In an action against the drawer of a bill of exchange, dated "Manchester":—*Held*: it was sufficient evidence of his having had notice of its dishonour, to prove that a letter, containing such notice, had put into the post office in London, directed

to him "Manchester."—*MANN v. MOORS* (1825), Ry. & M. 249, N. P.

*Annotations*:—*Conad.* *Siggers v. Brown* (1836), 1 Mood. & R. 620. *Foll.* *Burmester v. Barron* (1852), 16 Jur. 314. *Reid.* *Clarke v. Sharpe* (1838), 3 M. & W. 166.

—]—Where a person drew a bill, dating it generally "London," on an acceptor also resident in London, whose address was stated in the bill:—*Held*: proof that a letter, containing notice of the dishonour of the bill, was put into the post office, addressed to the drawer at "London," was evidence to go to the jury that he had due notice of dishonour.—*CLARKE v. SHARPE* (1838), 3 M. & W. 166; 1 Horn & H. 35; 150 E. R. 1101.

*—Foll.* *Burmester v. Barron* (1852), 17 Q. B. 828. *Apld.* *Berridge v. Fitzgerald* (1869), 10 B. & S. 668.

**1755.** ———.—]—*Due diligence.*—A bill was drawn, dated "London," but not otherwise giving the address of the drawer. It was directed to, & accepted by, "Captain B., 27, Saville Row." In an action by indorsee against drawer, issue on a plea denying notice of dishonour, pltf. proved that he had put a letter into the post, addressed to the drawer, "London." The drawer gave evidence that he had not received the letter, that he was a clerk in the Admiralty & lived at Chelsea, & that this might have been ascertained by inquiry of the acceptor, who was his brother. No such inquiry had been made. In an action against the drawer:—*Held*: the fact that the holder had sent a letter to deft., addressed as he had dated the bill, was evidence on which a jury would be warranted in finding that due diligence had been used to give notice of dishonour, though no inquiry had been made of the acceptor.—*BURMESTER v. BARRON* (1852), 17 Q. B. 828; 21 L. J. Q. B. 135; 18

**1752 i.** ———.—]—*Insufficiently addressed.*—A letter giving notice of the dishonour of a bill, though from direction it has been delayed, is the less sufficient if, being posted than was necessary, it has in fact been received within the period allowed by law. *BANK OF BRITISH NORTH AMERICA v. ROWE* (1844), 1 U. C. R. 199. CAN.

dishonour to the indorser of a promissory note, put in the office at St. John, as follows: "D. (def.). Mills, Nashua," is not sufficient, without proof that a letter thus directed would probably reach in due course through the medium

Kerr,

**1752 iii.** ———.—]—of non-payment sent to an indorser through the post office, addressed to him in "York Township," in which resided, was there no evidence as to or more post offices in that township nor any proof that a letter for any person would have been usually used in a different manner, or in the common course to have directed to any certain post office in the township, or in any other township near him.—*BANK OF UPPER v. BLOOM* (1849), 5 U. C. R.

**1752 iv.** ———.—]—A notice of non-payment sent through the post, but addressed merely "to the or exor. of the late J., Toronto," is —*BANK OF BRITISH NORTH* (1851), 5 U. C. R.

*v.* ———.—]—The indorser, a married woman, died intestate during the currency of a note which she had indorsed as surety for her husband, & notice of protest was sent to "J. H., exor. of the last will & testament of M. H., Perth," & received by the husband, who resided with his children in the house, which his deceased wife had occupied. No letters of administration had been granted:—*Held*: the notice was sufficient.—*MERCHANTS BANK v. BELL* (1881), 29 Gr. 413.—CAN.

**1752 vi.** ———.—]—In an action against exors. of deceased indorser of a note, it appeared that some of the notices of dishonour were addressed, "Administrator of S.'s estate, Belleville, Ont.," while others were similarly addressed, "Canifton," the latter having been testator's place of residence. It was proved that the notices posted in due time, & as to the 1st of them, one of the exors. stated that he had received two, one the maturity note, from testator's widow, who got it at Canifton, the other from his co-exor., but whether a day or a fortnight after the protest he could not say, while his co-exor. stated that he had never received any notice at all, but was shown one by the other as having been received by him:—*Held*: the reasonable inference to be drawn was that the notice had been received in —*Mc*

(1872), 22 C. P.

**1752 vii.**

—]—Notice of is not sufficiently given to an ; when such notice is sent to an

erroneous address of such indorser, given by the maker at the time he got the note discounted.—*MERCHANTS BANK OF CANADA v. CUNNI* (1892), Q. R. 1 Q. B. 33.—CAN.

**1752 viii.** ———.—]—that a letter of advice of dishonour of a bill of exchange, intended for M., residing at S., a village in the immediate vicinity of Dumfries, which was the post town, addressed to M., T., Dumfries, being another village in the immediate vicinity of Dumfries, was put into the post office of Castle-Douglas, about twenty miles distant:—*Held*: not sufficient proof of due notification.—*MILLIGAN v. BARBOUR* (1877), 7 Sh. (Cl. of Sess.) 489; 4 Coll. 637.—SCOT.

*k.* ———.—]—*Addressed to the post office.*—Though there is a post office in the township in which the indorser resides, the holder need not direct his notice to that office, if there be a nearer office in the adjoining township to which the indorser's letters are sent.—*BANK OF UPPER v. SMITH* (1847), 3 U. C. 358.—CAN.

*l.* ———.—]—*Addressed by illegible signature.*—A notary at Montreal, Quebec, protested a note upon which deft., an attorney at Belleville, Ontario, was indorser. The notary could not read deft.'s signature, but made an imitation of it upon the & in the superscription of the was addressed to "Belleville, P. O.," i.e., Province of Ontario. Deft. was well known at, & constantly letters from the Belleville post office. There proved to be a



L. T. O. S. 241; 16 Jur. 314; 117 E. R. 1498.

*Annotation*.—*Folld. Chatteris v. Darter* (1853), 20 L. T. O. S. 296.

1756. — — — — —.]—Pltf., holder of a bill of exchange, having asked the acceptor on the last day of grace if he was going to pay the bill, was told by him that deft., the drawer, would pay it, & that he had not a shilling. Pltf. did not formally present the bill to the acceptor, but sent on the same day, by post, a notice to deft. that the bill was not paid, which notice was addressed to deft. at "Edwards Street, Hampstead Road." Deft. had a lodging at 28, Edwards Street, but the notice never reached him. The bill was dated from "London" only:—*Held*: there was no impediment to the action for want of a sufficient notice of dishonour.—*RENWICK v. TIGHE* (1860), 8 W. R. 391.

1757. — — — — — Sent to substituted address.]—A bill of exchange, drawn by deft., was indorsed by him to pltf., A. & Co., who carried on business in partnership at S., four miles from Birmingham, by them to the B. bank, & by them to W. It became due on Aug. 17, & was dishonoured. On the 18th W. returned it to the bank at Birmingham, who received it on the 19th. A. had previously given directions at the bank, that all communications for his firm should be made to him at T., in Carnarvonshire, in which neighbourhood he was engaged in mining concerns, & the bank, on Aug. 20, sent notice of dishonour by post to A. at T., which he received there on the 21st, & by the post of the 22nd he sent notice to deft.:—*Held*: the notice to A., & to deft., was duly given.

I thought that the direction to send letters to T. was reasonable, & I have little doubt that the jury would have so found. In fact, it appears that time was gained instead of lost by sending at once to T., rather than sending to S., from which the letter might have had to go to T. (*ROLFE, B.*).—*SHELTON v. BRAITHWAITE* (1841), 8 M. & W. 252; 11 L. J. Ex. 54; 151 E. R. 1031.

*Annotation*.—*Mentd. King v. Bickley* (1842), 6 Jur. 382.

Belleville in New Brunswick. Other notes with deft.'s indorsement thereon had been protested by the same notary. Deft. swore that he had never received the notice, but his clerks, who were accustomed to take his letters from the post office, were not called. The notice to another indorser, addressed to Belleville, P. O., was received by him:—*Held*: (1) if the imitation of deft.'s signature put upon the notice addressed to Belleville was an exact imitation of deft.'s signature upon the note, & such notice was posted at Montreal, it would have been sufficient, whether it reached its destination or not; (2) upon the facts in evidence, there should be a new trial (in which judgment was given discharging the indorser).—*BAILLIE v. DICKSON* (1882), 46 U. C. R. 167; 7 A. R. 759.—CAN.

to  
signature.]  
written by indorser.  
—The address & ordinary evidence of the indorser being at P., notice of protest addressed to O., which is not the place where the note is dated & which has not been designated by the indorser, is of no effect, & the word "O." written in pencil under the signature of the indorser, without any proof of the circumstances in & the person by whom, it written or was ordered to be, does not bind the indorser.—*BANK OF CANADA v. GILSON* (1894),

Q. R. 5 S. C. 499; *affd.* Q. R. 6 S. C. 88.—CAN.

1760 I. — — — — — Sent to only known in fact  
Def. had resided & carried on business for several years at B., & was in the habit of receiving through the post office letters addressed to him there:—*Held*: a notice of dishonour addressed to him at B. was sufficient, though he had changed his residence about that time, pltf. not being aware of such change, & having applied for information as to his residence to the payee of the note, with whom deft. was in the habit of transacting his business in St. John.—*BANK OF NEW BRUNSWICK v. MILLICAN* (1859), 4 All. 254.—CAN.

1760 II. — — — — — Receipt of finding that  
notice of dishonour had received by an indorser of a  
notwithstanding the fact that the notary had addressed the notice to an address which, prior to the making of the note, had ceased to be the address of the indorser:—*Held*: warranted by the evidence, especially in view of the indorser's failure to deny the receipt of the notice.—*ROYAL BANK OF CANADA v. GOLD*, [1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—CAN.

*BANK OF CANADA v. GOLD*,

1758. — — — — — Addressed to brother's house—  
Attempt to find address.—Letter not returned.]—In an action by indorsee against indorser of a bill, proof that pltf., on the day after the dishonour of the bill, endeavoured without success to obtain from the other parties to the bill, one of whom was deft.'s brother, the address of deft., that he sent a notice by post addressed to him at his brother's house, where the bill was payable, & that the letter was not returned, is evidence for the jury that deft. had due notice.—*CHATTERIS v. DARTER* (1853), 20 L. T. O. S. 296.

1759. — — — — — Sent to ostensible place of business—Director of company.]—*BERRIDGE v.*, No. 1736, *ante*.

1760. — — — — — Sent to only known address.]—The holder of a bill of exchange, which was dishonoured after the appointment of a trustee in the bkpcy. of the drawer, sent notice of the dishonour to the drawer by post to an address, which he had left for some months:—*Held*: that address being the only one with which the holder was acquainted, the notice was sufficient.—*Re BELLMAN, Ex p. BAKER* (1877), 4 Ch. D. 795; 46 L. J. Bcy. 60; 36 L. T. 339; 25 W. R. 454, C. A.

1761. — — — — — Letter deposited for posting—Acknowledgment without referring to contents.]—Proof that pltf., a merchant, on Nov. 14 wrote in his counting-house a letter giving notice of dishonour, & put it on his table to be carried to the post office, & that by the course of business in his counting-house, all letters deposited on such table were carried to the post office by a porter, is not sufficient *prima facie* evidence that the letter was sent by post.

A letter from deft. acknowledging pltf.'s letter of Nov. 14, without referring to its contents, presumed to be an acknowledgment of the letter containing notice of dishonour.—*HETHERINGTON v. KEMP* (1815), 4 Camp. 193, N. P.

*Annotations*.—*Apld. Hawkes v.* (1828), 4 715;  
*Skilbeck v. Garbett* (1845), 7 Q. B.

[1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—CAN.

p. — — — — — Postmark.]—A foreign postmark on a letter is *prima facie* evidence of the time when the letter was mailed.—*O'NEIL v.*, 1 Ont. Dig. 697.—CAN.

— In an drawer of a bill of dated at Moncton:—*Held*: in the absence of any evidence of its locality, or the course of the post with regard to it, the mere putting the letter in the post office at St. John, containing a notice of dishonour, directed to deft. at Moncton, did not afford a reasonable presumption that the letter would reach its destination.

Where, by the copy of a notice of dishonour taken by a copying machine, it appeared to have been directed at the bottom to the deft. *Remble*: the letter put into the post office, containing the notice, would be presumed to be directed on the outside the same way.—*BALLOCH v. BINNEY* (1847), 3 Kerr, 440.

Entries in office register.]  
—To prove notice of dishonour to the indorser of a note, the receipt of which he denied, the notary's clerk stated that he had no independent recollection of the matter, but that he had no doubt of having mailed the notice to the address given by deft., from the

# 270 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Sect. 4.

: Sub-sect. 6, B. & C.]

**1762. — Witness uncertain who posted letter.]**  
—A bill having been dishonoured, the holder's clerk, who copied the letter containing the notice, said that the letter was put into the post on the Tuesday morning, but he had no recollection whether it was done by himself or another clerk :—*Held* : not sufficient evidence of putting into the post.—*HAWKES v. SALTER* (1828), 4 Bing. 715 ; 1 Moo. & P. 750 ; 6 L. J. O. S. (C. P. 180 ; 130 E. R. 944.

*Reid. Skilbeck v. Garbett* (1845), 7 Q. B. 846.

**1763. — Onus of proof of time of receipt.**  
If a notice of dishonour is sent by post on the day on which the party ought to receive it, the onus is on plff. to prove affirmatively, that the letter was put in in time to reach the party that day according to the course of post.—*FOWLER v. HENDON* (1834), 4 Tyr. 1002.

*n. Reid. Goldstone v. Jones* (1847), 11 Jur. 910.

**1764. "Notwithstanding any miscarriage by post office"—Delay.]**—If a letter, giving notice of the dishonour of a bill, is put into the twopenny post office, in time to be delivered on the proper day, in the ordinary course of business, but, from some delay in the office, does not reach its destination till afterwards, such delay in the office will not prejudice the party by whom the notice was given.—*DOHREE v. EASTWOOD* (1827), 3 C. & P. 250. N. P. ; subsequent proceedings (1828), 3 C. & P. 254.

*Annotations :* *Reid. Stocken v. Collins* (1841), 9 C. & P. 653.

*Mentd. Rowe v. Tipper* (1853), 13 C. B. 2

**1765. —** — A party being entitled to notice of dishonour of a bill of exchange on Apr. 28, & all the parties living in town, a witness stated that he put a letter containing the notice of dishonour into the post at 1 o'clock on the 28th. The post mark on the letter was the 29th :—*Held* : if the jury were satisfied that the letter was put into the post sufficiently early for the party in the ordinary course of the post to have received it on the 28th, it was sufficient, & its having been delayed in the post office would make no difference.

If a party puts a notice of dishonour into the post, so that in due course of delivery it would arrive in time, he has done all that can be required of him, & it is no fault of his that delay occurs in the delivery (*PARKE, B.*).—*STOCKEN v. COLLIN*

to that effect in the protest in his handwriting, & from the entries in the notarial register kept in the was produced, & which particulars of the entry, & the day & hour of mailing

the entry just before mailing, when he would look at his watch, note the time,

cient evidence of the mailing of notice, & the jury having found for deft. a new trial should be *MERCHANTS BANK* 30 C. P. 236.—*CAN.*

1. —.]—Proof of the posting of a letter by the agent of the dis- or of a bill of

of

(Ct. Sess.) 4 : 7  
*SCOT.*

1.—Where the evidence of notice of , was not only

distinct & unequivocal, but was supported by evidence that it was the invariable practice of plffs. to send of dishonour in a specified form : although deft. denied receipt, notice, & there was no copy of the notice in the letter-book, the giving of the notice had been proved.—*STOCKEN v. AITKEN* (1846), 9 Dunl. (Ct. of

**1764** by in putting a letter into the post office is *BANK OF UPPER CANADA v. SMITH* (1847), 3 U. C. R. 358.—*CAN.*

## PART XII. SECT. 4, SUB-SECT. 6.

a. Question of law — When facts undisputed.]—*BANK OF UPPER CANADA v. SMITH* (1848), 4 U. C. R. 483.—*CAN.*

bill presented & dishonoured.]—A notice of dishonour to the indorser must, either in express terms or by

(1841), 7 M. & W. 515 ; H. & W. 84 ; 10 L. J. Ex. 227 ; 151 E. R. 870.

*Annotations :*—*Apld. Dunlop v. Higgins* (1848), 1 H. L. Cas. 381. *Reid. Woodcock v. Holdsworth* (1846), 8 L. T. O. S. 215 ; *British & American Telegraph Co. v. Colson* (1871), L. R. 6 Exch. 108 ; *Re Imperial Land Co. of Marseilles, Harris' Case* (1872), 7 Ch. App. 587 ; *Household Fire Insce. v. Grant* (1879), 4 Ex. D. 216.

**1766. —** —.]—If a notice of dishonour of a bill of exchange be posted by the holder in due time, he is not prejudiced if, through mistake of delay of the post office, it be not delivered in due time.—*WOODCOCK v. HOULDSWORTH* (1846), 16 M. & W. 124 ; 1 New Pract. Cas. 575 ; 16 L. J. Ex. 49 ; 8 L. T. O. S. 215 ; 153 E. R. 1126.

**1767. — Loss.]**—A notice of dishonour of a bill is not insufficient merely because it does not state that deft. will be held liable. It is not necessary that a notice of dishonour should be shown to have come to deft.'s hands, nor is it any answer that it has not. It is enough that plff. has duly posted it.

Plffs. are not bound to prove that the letter arrived in the hands of deft. It was a good notice, properly directed & posted in time. Plffs. are not answerable for its miscarriage ; they have done what they can (*BYLES, J.*).—*MACKAY v. JUDKINS* (1858), 1 F. & F. 208, N. P.

## C. Form and Sufficiency of Notice.

See 1882 Act, s. 49 (5)–(7).

**1768. General requisites—Intimation that bill presented & dishonoured—Mere demand for payment insufficient.]**—A notice of the dishonour of a bill of exchange must contain an intimation that payment of the bill has been refused by the acceptor, & a letter merely containing a demand of payment is not to be a sufficient notice.—*HARTLEY v. CASE* (1825), 4 B. & C. 339 ; 1 C. & P. 676 ; 6 Dow. & Ry. K. B. 505 ; 3 L. J. O. S. K. B. 262 ; 107 E. R. 1085.

*Annotations :*—*Consd. Solarte v. Palmer* (1831), 7 Bing. 530. *Apld. Solarte v. Palmer* (1834), 1 Bing. N. C. 194. *Consd. Boulton v. Welsh* (1837), 3 Bing. N. C. 688 ; *Hodger v. Stevenson* (1837), 1 Jur. 987. *Distd. Norris v. Salomonson* (1837), 1 Jur. 55. *Consd. Furze v. Sharwood* (1841), 2 Q. B. 388 ; *Cant v. Thompson* (1849), 7 C. B. 400. *Reid. Swain v. Lewis* (1835), 4 Dowl. 261 ; *Paul v. Joel* ( ), 27 L. J. Ex. 380. *Mentd. Chapman v. British Guiana Bank* (1846), 6 Moo. P. C. C. 23 ; *Kennedy v. Thomas*, [1894] 2 Q. B.

**1769. —** —.]—A notice of dishonour must that the bill has been presented &

necessary intendment, show that the note has been presented for payment, & that payment has been refused.—*BANK OF UPPER CANADA v. STREET* (1842), 1 Ont. Dig. 690.—*CAN.*

**1769 II. —** —.]—A notice of dishonour to an indorser stated that the note was duly protested for non- , not saying that it was pre-*Held* : sufficient.—*BLAIN v.* (1852), 9 U. C. R. 473.—*CAN.*

**1769 III. —** —.]—In the absence of proof by deft. indorser, of of another note :—*Held* : the notice of dishonour, addressed to the maker & indorser conjointly : "Your C.'s note for \$— currency dated at Montreal, Sept. 2, 1856, payable 3 months after date to you or order, & indorsed by you, was this day, at the request of S. & Co., of this city, merchants, duly protested by me for non-payment," was sufficient.—*DR v. COURTNEY & MOORE* C. J.



dishonoured, or some words to that effect.—*PHILLIPS v. GOULD* (1838), 3 C. & P. 355, N. P.

*Annotation*:—*Mentd. Chard v. Fox* (1849), 14 Q. B. 200.

**1770.** *Statement that bill "dishonoured" sufficient.*—It is a sufficient notice of the dishonour of a promissory note, to write to deft.: "Your note has been returned dishonoured," without the words, "Your note has been presented for payment."—*EDMONDS v. CATES* (1838), 2 Jur. 183.

**1771.** ———.—A bill of exchange having been drawn upon A. was accepted by him, & was afterwards indorsed by the drawer to plffs., who indorsed it to the B. bank, who indorsed it to W. The bill having been dishonoured when due, W. gave notice of it to the bank, who gave notice to plffs., one of whom wrote the following letter to the drawer: "To my surprise, I have received an intimation from the B. bank, that your draft on A. is dishonoured, & I have requested them to proceed on same":—*Held*: (1) if there was more than one bill to which the letter could apply, it lay upon deft. to prove that fact, in order to show its uncertainty; (2) the letter was a good notice of dishonour.—*SHELTON v. BRAITHWAITE* (1841), 7 M. & W. 436; 10 L. J. Ex. 218; 151 E. R. 836; *sub nom. SHELTON v. BRADLEY*, 5 Jur. 28; *subsequent proceedings*, 8 M. & W. 252.

*Annotations*:—*Appld. Stockman v. Parr* (1843), 1 Car. & Klr. 41. *Refd. King v. Bickley* (1842), 6 Jur.

**1772.** ———.—A notice of dishonour, which states that a bill of exchange, "has been dishonoured," is sufficient, although it does not state that the bill has been presented.—*STOCKEN v. COLLINS* (1841), 9 C. & P. 653, N. P.; *subsequent proceedings*, 7 M. & W. 515.

*Annotations*:—*Mentd. Woodcock v. Holdsworth* (1846), 8 L. T. O. S. 189; *Dunlop v. Higgins* (1848), 1 H. L. Cas. 381; *British & American Telegraph Co. v. Colson* (1871), L. R. 6 Exch. 108; *Re Imperial Land Co. of Marseilles, Harris' Case* (1872), 7 Ch. App. 587; *Household Fire & Carriage Accident Insco v. Grant* (1879), 4 Ex. D. 216.

**1773.** ———.—It is not necessary that a notice of dishonour of a bill of exchange should state expressly that the bill has not been paid. It is sufficient if the fact is stated in such terms that men of business may reasonably infer that it has not.—*BAIN v. GREGORY* (1866), 14 L. T. 601; 14 W. R. 845.

**1774.** ———. *Whether statement necessary that party receiving notice looked to for payment.*—The notice of dishonour of a bill of exchange should inform the party to whom it is addressed, either in express words or by necessary implication, that the bill has been dishonoured, & that the holder looks to him for payment.

The attorney of the holder of a bill of exchange, the day after it had been dishonoured by the acceptor, sent a letter to the indorser, stating that a bill for £688, drawn by K. upon J. & Co., bearing the indorsement of the person to whom the letter was addressed, had been put into the hands of the attorney by the holder, with directions to take legal measures for the recovery thereof, unless immediately paid to the attorney:—*Held*: not to be a sufficient notice of the dishonour to enable the holder to recover against the indorser in an action upon the bill.—*SOLARTE v. PALMER* (1834),

8 Bli. N. S. 874; 1 Bing. N. C. 194; 2 Cl. & Fin. 93; 1 Scott, 1; 5 E. R. 1166.

—*Appld. Boulton v. Welsh* (1837), 3 Bing. N. C. 688. *Consd. Hedger v. Steavenson* (1837), 2 M. & W. 799. *Distd. Housego v. Cowne* (1837), 2 M. & W. 348; *Norris v. Salomonson* (1837), 4 Scott, 257. *Consd. Hurgh v. Legge* (1839), 5 M. & W. 418; *Strange v. Price* (1839), 10 Ad. & El. 125; *Lewis v. Gompertz* (1840), 6 M. & W. 399. *Appld. Messenger v. Southey* (1840), 8 Dowl. 594. *Consd. Furse v. Sharwood* (1841), 2 Q. B. 388. *Appld. Shelton v. Braithwaite* (1841), 7 M. & W. 436. *Consd. Allen v. Edmundson* (1848), 2 Exch. 719; *Chard v. Fox* (1849), 14 Q. B. 200; *Everard v. Watson* (1853), 1 E. & B. 801. *Appld. Paul v. Joel* (1858), 3 H. & N. 456. *Distd. Paul v. Joel* (1859), 4 H. & N. 355. *Refd. Swain v. Lewis* (1835), 4 Dowl. 201; *Grugeon v. Smith* (1837), 6 Ad. & El. 409; *Houlditch v. Cauty* (1838), 4 Bing. N. C. 411; *Curlewis v. Corfield* (1841), 1 Q. B. 814; *King v. Bickley* (1842), 2 Q. B. 419; *Robson v. Curlewis* (1842), 2 Q. B. 421; *Caunt v. Thompson* (1849), 7 C. B. 400.

**1775.** ———.—Notice of the dishonour of a bill, by whatever party given, is insufficient if it merely states that the bill has not been paid when due. *Seemle*: notice of dishonour, given by the holder, need not state that he looks to the party addressed for payment.—*FURZE v. SHARWOOD* (1842), 2 Q. B. 388; 2 Gal. & Dav. 116; 11 L. J. Q. B. 19; 6 Jur. 554; 114 E. R. 154.

*Annotations*:—*Consd. East v. Smith* (1847), 10 L. J. Q. B. 292; *Paul v. Joel* (1859), 5 Jur. N. S. 603. *Refd. King v. Bickley* (1842), 6 Jur. 582; *Robson v. Curlewis* (1842), 2 Q. B. 421; *Miers v. Brown* (1843), 11 M. & W. 372; *Caunt v. Thompson* (1849), 7 C. B. 400. *Mentd. Yorkshire Banking Co. v. Beaton* (1880), 5 C. P. D. 109; *Nicholls v. Knapman* (1909), 101 L. T. 746.

**1776.** ———.—Notice of dishonour of a bill of exchange, in the following terms: "I hereby give notice that a bill for £50 at 3 months after date, by A. upon & accepted by B., & indorsed by you, lies at, etc., dishonoured":—*Held*: sufficient, without any further intimation that plff. looked to deft. for payment.—*KING v. BICKLEY* (1842), 2 Q. B. 419; 11 L. J. Q. B. 224; 6 Jur. 582; 114 E. R. 166.

*Annotation*:—*Refd. Caunt v. Thompson* (1849), 7 C. B. 400.

**1777.** ———.—The holder of a bill of exchange need not inform a party, to whom he gives notice of its dishonour, that he looks to him for payment.—*MIERS v. BROWN* (1843), 11 M. & W. 372; 12 L. J. Ex. 290; 152 E. R. 847.

*Annotation*:—*Refd. Caunt v. Thompson* (1849), 7 C. B. 400.

**1778.** ———.—A notice of dishonour of a bill of exchange should show, directly or by necessary implication, (1) that the bill has been presented, (2) that it has not been paid, & (3) that the party to whom the notice is given is looked to for payment.—*EAST v. SMITH* (1847), 4 Dow. & L. 744; 16 L. J. Q. B. 292; 9 L. T. O. S. 130; 11 Jur. 412.

*Annotation*:—*Refd. Caunt v. Thompson* (1849), 7 C. B. 400.

**1779.** ———.—It is sufficient notice of dishonour to the indorser of a note, if a person acting for the holder informs him that the note has been presented & dishonoured, though he does not add that the indorser will be looked to for payment, & though, at the time of such notice, he inquires of the indorser where the maker resides.—*CHARD v. FOX* (1849), 14 Q. B. 200; 14 L. T. O. S. 13 Jur. 960; 117 E. R.

**1780.** ———.—A notice of dishonour of a bill is not insufficient, merely because it does

**1780 iv.** ———.—In an action by indorsee against indorser of a promissory note, protested for non-service of the protest is

notice of dishonour.—*HAMILTON v.* (1841), 3 L. R. 409; *Long & T.* —IR.

**17701.** "dishonoured" *HOOD* (1879), 5 V. L. R.

that bill *MAON v. AUS.*

## 272 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 4.—

not state that deft. will be held liable.—**MACKAY v. JUDKINS** (1858), 1 F. & F. 208, N. P.

**1781.** ———. Whether statement necessary on whose behalf payment demanded.—Or where bill lying.]—A bill of exchange, indorsed in blank, was left by the indorsee at the office of R., an attorney, to be presented by him. On being presented by R., it was dishonoured. R. wrote to the drawer on the following day, describing the bill, & stating that it was dishonoured, & subscribed his name & residence to the letter :—*Held* : a sufficient notice of dishonour, though he did not state on whose behalf he applied, or where the bill was lying.—**WOODTHORPE v. LAWES** (1836), 2 M. & W. 109 ; 2 Gale, 193 ; 6 L. J. Ex. 69 ; 150 E. R. 690.

*Housego v. Ruscoe* (1837), 2 M. & W. 15 M. & W. 231.

**1782. Written notice—Statement that bill returned unpaid—Demand for payment.]**—A notice of dishonour in the following form : " The note for £200 drawn by H., dated July 18 last, payable 3 months after date, & indorsed by you, became due yesterday, & is returned to me unpaid. I, therefore, request you will let me have the amount forthwith " :—*Held* : not sufficient.—**BOULTON v. WELSH** (1837), 3 Bing. N. C. 688 ; 3 Hodg. 77 ; 4 Scott, 425 ; 6 L. J. C. P. 243 ; 1 Jur. 263 ; 132 E. R. 575.

*Annotations* :—**Consd.** *Hedger v. Houlditch v. Cauty* (1838), 4 Bing. N. C. 411 ; *Strange v. Price* (1839), 8 L. J. Q. B. 197. **Apld.** *r. Southey* (1840), 1 Man. & G. 76. **Consd.** *Furze v. Sharwood* (1841), 2 Q. B. 388. **Dbtd.** *Robson v. Curlewis* (1842), Car. & M. 378. **Consd.** *Robson v. Curlewis* (1842), 3 Gal. & Dav. 69. **Reid.** *Lewis v. Gompertz* (1840), 6 M. & W.

**1783.** ———. The following is a cident notice of dishonour to the drawer of a bill of exchange : " Your bill, drawn on T., & accepted by him, is this day returned with charges, to which we request your immediate attention."—**GRUGEON v. SMITH** (1837), 6 Ad. & El. 409 ; 2 Nev. & P. K. B. 303 ; Will. Woll. & Dav. 516 ; 112 E. R. 191.

*Annotations* :—**Consd.** *Hedger v. Stevenson* (1837), 2 M. & W. 799 ; *Houlditch v. Cauty* (1838), 1 Arn. 162 ; *Strange v. Price* (1839), 8 L. J. Q. B. 197 ; *Messenger v. Southey* (1840), 8 Dowl. 594. **Apld.** *Armstrong v. Christiani* (1848), 5 C. B. 687. **Reid.** *Lewis v. Gompertz* (1840), 6 M. & W. 399 ; *Furze v. Sharwood* (1841), 2 Q. B. 388 ; *Robson v. Curlewis* (1842), 3 Gal. & Dav. 69. **Mentd.** *Paul v. Joel*

**1784.** ———. A notice of the dishonour of a promissory note was in the following words : " I am desired by H. to give you notice that a promissory note, dated Aug. 10, 1835, made by T. for £99 18s., payable also to your order 2 months after date thereof, became due yesterday, & has been returned unpaid. I have to request you will please remit the amount thereof, with 1s. 6d. noting free of postage, by return of post " :—*Held* : a sufficient notice of dishonour.—**HEDGER v. STRAVENSON** (1837), 2 M. & W. 799 ; Murp. & H.

178 ; 5 Dowl. 771 ; 6 L. J. Ex. 189 ; 1 Jur. 987 ; 150 E. R. 980.

*Annotations* :—**Consd.** *Houlditch v. Cauty* (1838), 1 Arn. 162 ; *Strange v. Price* (1839), 2 Per. & Dav. 278 ; *Lewis v. Gompertz* (1840), 6 M. & W. 399 ; *Messenger v. Southey* (1840), 1 Man. & G. 76 ; *Furze v. Sharwood* (1842), 2 Gal. & Dav. 116. **Apld.** *Armstrong v. Christiani* (1848), 5 C. B. 687. **Reid.** *Robson v. Curlewis* (1842), 2 Q. B. 421 ; *Paul v. Joel* (1859), 4 H. & N. 3

**1785.** ———. A notice of dishonour, addressed to deft., stating that " your draft upon C. for £50, due Mar. 3, is returned to us unpaid, & if not taken up in the course of this day, proceedings will be taken against both you & him for the recovery thereof," is a good notice of dishonour.—**ROBSON v. CURLEWIS** (1842), 2 Q. B. 421 ; Car. & M. 378 ; 3 Gal. & Dav. 69 ; 114 E. R. 167.

**1786.** Subsequent promise by party receiving notice that bill should be paid.]—Notice by holder to indorser, of the dishonour of a bill by acceptor, in the following terms : " H. & Co. are surprised to hear that G.'s bill was returned to the holder unpaid," followed by a visit from the indorser to the holder on the same day, in which he expressed his regret, & promised that he would write to the other parties, by whom or by himself the bill should be paid :—*Held* : sufficient to render him liable.—**HOULDITCH v. CAUTY** (1838), 4 Bing. N. C. 411 ; 1 Arn. 162 ; 6 Scott, 209 ; 7 L. J. C. P. 217 ; 132 E. R. 845.

*Annotations* :—**Consd.** *Strange v. Price* (1839), 8 L. J. Q. B. 197 ; *Furze v. Sharwood* (1841), 2 Q. B. 388.

**1787.** ———. Pltf., indorsee of a bill of exchange, sent the following letter to deft., the drawer : " I beg to inform you that D.'s acceptance for £200, drawn & indorsed by you, due July 31, has been presented for payment, & returned, & now remains unpaid " :—*Held* : a sufficient notice of dishonour.—**COOKE v. FRENCH** (1840), 10 Ad. & El. 131, n. ; 3 Per. & Dav. 596 ; 9 L. J. Q. B. 281 ; 4 Jur. 433 ; 113 E. R. 50.

**1788.** ———. A bill of exchange having been presented for payment to the acceptor, & dishonoured, the holder as indorsee, wrote on the following day to the next immediate indorser as follows : " The bill of exchange for £250, drawn by R. on & accepted by C., & bearing your indorsement, has been presented for payment to the acceptor thereof, & returned dishonoured, & now lies overdue & unpaid with me as above ; of which I hereby give you notice " :—*Held* : a sufficient notice of dishonour.—**LEWIS v. GOMPERTZ** (1840), 6 M. & W. 399 ; 9 L. J. Ex. 182 ; 4 Jur. 393 ; 151 E. R. 467.

*Annotations* :—**Reid.** *Furze v. Sharwood* (1842), 2 Gal. & Dav. 116 ; *East v. Smith* (1847), 16 L. J. Q. B. 292 ; *Caunt v. Thompson* (1849), 7 C. B. 400. **Mentd.** *Walton v. Maskell* (1844), 2 Dowl. & L. 410.

**1789.** ———. A notice, that a bill was returned dishonoured, is sufficient notice of dishonour.—**MANTZ v. MAY** (1843), 2 L. T. O. S. 123.

**1790.** ———. Mere statement that bill unpaid.]—A letter stating that a bill of exchange " lies at

**1783 l.**  
If return  
ent.)—  
following

that  
of dishonour in the  
: " Your bill on

: sufficient.—**BELL v.**  
**Arm. M. & O. 401.—IR.**

1. an action of

:—*Held* : insufficient.—**RYAN**  
**SEYMOUR** (1841), Arm. M. & O. 181.

has been this day  
protest for non  
you will take it up by

us  
of post, as  
or.

of  
drawer in the wing words : "  
notice, that your draft, of  
above is a true copy, has been this  
returned to me unpaid, & lies in my

unpaid.]—In on a bill of  
exchange by against indorser,  
pltf. proved the of  
dishonour, signed by him, & served on  
deft. : " Please to take notice, that



my office due & unpaid," is not a good notice of dishonour. *Semble*: it would not be sufficient even though deft. himself treated it as a notice of dishonour.—*PHILLIPS v. GOULD* (1838), 8 C. & P. 355, N. P.

*Annotation*:—*Mentd.* Chard v. Fox (1849), 14 Q. B. 300.

1791. ———.]—A notice of dishonour in the following terms: "S. & Co. inform P. that B.'s acceptance, £87 5s. is not paid. As indorser, P. is called upon to pay the money, which will be expected immediately. Dec., 1830"—*Held*: not sufficient notice to P. of dishonour of a bill accepted by B., payable Dec. 24.—*STRANGE v. PRICE* (1839), 10 Ad. & El. 125; 2 Per. & Dav. 278; 8 L. J. Q. B. 197; 3 Jur. 361; 113 E. R. 48.

*Annotations*:—*Reid.* Messenger v. Southey (1840), 8 Dowl. 594; Paul v. Joel (1858), 3 H. & N. 455; Maxwell v. Brain (1864), 10 L. T. 301. *Mentd.* Furze v. Sharwood (1841), 2 Q. B. 388.

1792. ———.]—In an action by indorsee against indorser of a promissory note, notice of dishonour by the maker in the following words: "This is to inform you that the bill I took of you, £15 2s. 6d., is not took up, & 4s. 6d. expense, & the money I must pay immediately; my son will be in London on Friday morning"—*Held*: to be insufficient.—*MESSINGER v. SOUTHEY* (1840), 1 Man. & G. 76; 8 Dowl. 594; 1 Scott, N. R. 180; 9 L. J. C. P. 278; 133 E. R. 254.

*Annotations*:—*Consd.* Furze v. Sharwood (1841), 2 Q. B. 388. *Reid.* Robson v. Curlewis (1842), 2 Q. B. 421; Everard v. Watson (1853), 22 L. J. Q. B. 222. *Mentd.* Armstrong v. Christiani (1848), 5 C. B. 687.

1793. ———.]—The following notices of honour, given in proper time by the holder to the drawer or indorser, viz., "A bill for £20, drawn by W. on H., due yesterday, is unpaid, & the person at whose house it is made payable does not speak favourably of the acceptor's punctuality," "This is to give you notice that a bill drawn by you & accepted by B. for £47, due July 19, 1835, is unpaid, & lies due at F.'s, 65, Fleet Street," notice, that the bill "lies due & unpaid at my house," holder's name & address subscribed, the notice in other respects like the preceding, "H.'s acceptance for £21, due on Saturday, is unpaid. He has promised to pay it in a week or 10 days. I shall be glad to see you upon it as early as possible"—*Held*: insufficient.—*FURZE v. SHARWOOD* (1842), 2 Q. B. 388; 2 Gal. & Dav. 116; 11 L. J. Q. B. 19; 6 Jur. 554; 114 E. R. 154.

*Annotations*:—*Consd.* Paul v. Joel (1859), 5 Jur. N. S. 603. *Reid.* King v. Bickley (1842), 6 Jur. 582; Robson v.

O.'s draft on M., due yesterday, amount £138 1s. 2d., on which you are an indorser, has not been paid"—*Semble*: the notice was insufficient.—*BRUNN v. HAYES* (1839), 1 Jebb & S. 658; 1 L. L. R. 327.—*IR.*

1796. ———.]—*But demanding payment of expenses.*—A notice of dishonour as follows: "A certain note for £350, & interest, given on Apr. 10 last, in favour of P., & indorsed by you, & signed B., in favour of H., fell due on 10-13th instant; you will, in consequence of non-payment, be held responsible for all costs or damages for

, 8 C. P.

CAN.

b. ———.]—*With notification that party receiving notice looked to for payment.*—A notice of dishonour as follows: "The note of A. for £50 days from Jan. 20, 18— due this day, remains

You are hereby notified that the bank looks to you for payment"—*Held*: sufficient, the note being payable at the bank.—*BANK OF UPPER CANADA v. STREET* (1846), 3 U. C. R. 29.—*CAN.*

c. ———.]—A notice of non-payment as follows: "The promissory note of B. for £20, at 3 months from Aug. 19, 1846, on which you are indorser, is due this day, unpaid. I you notice that as the holder of note I look to you for payment by indorsee to client, without that the note had been presented

at a office in London.—*HARRIS v. R. 580.*—*CAN.*

—A letter in wing terms: "I am now that it (a cheque) has not yet been the P. bank (on the cheque was drawn). In case of being returned here again

Caunt v. Thompson (1849), 7 C. B. 400. v. Smith (1847), 18 L. J. Q. B. 292; Yorkshire v. Beaton (1860), 5 C. P. D. 109; Nicholls v. Knapman (1909), 101 L. T. 746.

1794. ———.]—*But demanding payment of expenses—incurred by noting.*—The attorney of an indorsee of a bill of exchange, who had received notice of dishonour, wrote to the drawer as follows: "I am requested to apply to you for payment of £35 9s. 4d., the amount of an overdue acceptance, drawn by you on & accepted by M., & to inform you, that unless same be paid to me with noting, interest, & 5s. for this application before 11 o'clock to-morrow, proceedings will taken without further notice"—*Held*: a sufficient notice of dishonour.—*WATHEN v. BLACKWELL* (1842), 6 Jur. 738.

1795. ———.]—*Pltf. gave deft. the following notice of dishonour*: "I am the holder of a bill drawn by you on M. for £98 15s., which became due yesterday, & is unpaid, & I have to state, that unless same is paid to me immediately, I shall proceed against you without delay for the amount. Amount of bill £98 15s., noting 5s., total £99"—*Held*: the word "noting" must be taken as part of the notice, & implied presentment & non-payment, & the notice was sufficient.—*ARMSTRONG v. CHRISTIANI* (1848), 5 C. B. 687; 17 L. J. C. P. 181; 10 L. T. O. S. 418; 136 E. R. 1048.

1796. ———.]—In an action by indorsee against indorser of a bill of exchange, the following letter from the holders to deft.: "We beg to acquaint you with the non-payment of M.'s acceptance to W.'s draft of Dec. 29 last, at 4 months, £50, amounting with expenses to £50 5s. 1d., which remit us in course of post without fail, or pay to E. & Co."—*Held*: a sufficient notice of dishonour.—*EVERARD v. WATSON* (1853), 1 E. & B. 801; 22 L. J. Q. B. 222; 21 L. T. O. S. 74; 17 Jur. 762; 1 C. L. R. 424; 118 E. R. 636.

3 H. & N.

1797. ———.]—*But requesting immediate attention.*—A letter informing deft. that "C.'s acceptance due that day was unpaid, & requesting immediate attention to it"—*Held*: a sufficient notice of dishonour.—*BAILEY v. PORTER* (1845), 14 M. & W. 44; 14 L. J. Ex. 244; 153 E. R. 382.

*Annotations*:—*Consd.* Paul v. Joel (1858), 3 H. & N. 455. *Apprvd.* Bain v. Gregory (1868), 14 W. R. 845. *Reid.* Allen v. Edmundson (1848), 2 Exch. 719; Everard v. Watson (1853), 22 L. J. Q. B. 222; Paul v. Joel (1859), 4 H. & N. 355. *Mentd.* Armstrong v. Christiani (1848), 5 C. B. 687; Maxwell v. Brain (1864), 10 L. T. 301.

deem it to notify you of the that as I will be required in to reverse the entry & return it"—*Held*: the words "not" are equivalent to "not" or to "unpaid," & the letter was a sufficient legal notice of dishonour.—*R. v. BANK OF MONTREAL*, 1 Exch. C. R.

1797. ———.]—*But immediate attention.*—A notice of dishonour was given in the following "I beg to advise you that for £3,500 in your favour, indorsed by yourself & wife, & held by our estate, was due yesterday. As I have not received renewal, will you kindly see that same is forwarded with cheque for discount, as there is no surplus on hand"—*Held*: such letter was a sufficient notice of dishonour.—

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**1798.** ———. ]—The holder of a bill of exchange, on the day after it became due, called at the office of J., the drawer, & on being told that he was engaged, wrote on a scrap of paper & sent in to him the following notice: "B.'s acceptance to J., £500, due Jan. 12, is unpaid; payment to R. & Co. is requested before 4 o'clock"—*Held*: the notice was sufficient.—*PAUL v. JOEL* (1859), 4 H. & N. 355; 28 L. J. Ex. 143; 32 L. T. O. S. 336; 5 Jur. N. S. 603; 7 W. R. 287; 157 E. R. 877, Exch.

*Annotation*:—*Consd. Maxwell v. Brain* (1864), 4 New Rep. 26.

**1799.** ——— **By firm—Lithographed name at top of notice—No signature.** ]—Notice of dishonour of a bill of exchange, indorsed to a banking co., was given to the drawer by a letter, written on a sheet of paper, at the head of which was lithographed the style of the bank, but having no signature:—*Held*: a sufficient notice of dishonour.—*MAXWELL v. BRAIN* (1864), 4 New Rep. 26; 10 L. T. 301; 10 Jur. N. S. 777; 12 W. R. 688.

**1800.** **Verbal notice—Statement that bill returned dishonoured—Production of bill with notary's mark thereon.** ]—If a witness verbally tells the drawer of a bill of exchange that his bill for £30 drawn on T. has come back dishonoured, & produces the bill, & points out to the drawer the notary's mark upon it, this is a sufficient notice of dishonour.—*IPS v. GOULD* (1838), 8 C. & P. 355, N. P.

*Annotation*:—*Mentd. Chard v. Fox* (1849), 14 Q. B. 200.

**1801.** ——— **Statement that bill dishonoured.** ]—A parol notice of dishonour, in the following terms: "I called to tell B. that the bill for £37 10s. was presented at the bankers, is unpaid & dishonoured, & I hope he will call & provide for it"—*Held*: sufficient.—*SMITH v. BOULTON* (1840), H. & W. 3.

**1802.** ——— **Made by holder.** ]—*Semble*: a simple statement of dishonour made by the holder of the bill might be good notice, although it would not be sufficient if made by another party.—*EAST v. SMITH* (1847), 4 Dow. & L. 744; 16 L. J. Q. B. 292; 9 L. T. O. S. 130; 11 Jur. 412.

*Annotation*:—*Reid. Caunt v. Thompson* (1849), 7 C. B. 400.

**1803.** ——— **Statement that acceptor could not pay—Construction.** ]—On the day after a bill became due, the holder's clerk called upon the drawer,

& told him that the bill had been duly presented, & that the acceptor "could not pay it," to which the drawer replied that "he would see the holder about it":—*Held*: it was properly left to the jury to infer from such conversation that the drawer had due notice of dishonour. *Semble*: a verbal notice of dishonour is not to be construed with the same strictness as a written notice, provided there be enough to warrant the jury in assuming that the party, to whom the notice is given, is informed that the bill has been duly presented & dishonoured, & that he is looked to for payment.—*METCALFE v. RICHARDSON* (1852), 11 C. B. 1011; 138 E. R. 776.

**1804.** **Presentation for payment to indorser—Not necessarily notice of dishonour to acceptor.** ]—Presentation for payment to an indorser is not *per se* notice of dishonour by the acceptor.—*RE LEEDS BANKING CO., Ex p. PRANGE* (1865), L. R. 1 Eq. 1; 35 L. J. Ch. 33; 13 L. T. 314; 11 Jur. N. S. 920; 14 W. R. 43.

**1805.** **Effect of misdescription or misstatement—Indorser stated to be drawer.** ]—A notice of dishonour was in the following form: "I give you notice, that a bill for, etc., drawn by you, upon, etc., lies at, etc., dishonoured." In an action by the indorsee against the indorser, who was not also the drawer:—*Held*: as the notice stated the bill to be drawn by deft. whereas he was the indorser & not the drawer, & as that was a variance likely to mislead deft., such notice could not be admitted.—*BEAUCHAMP v. CASH* (1822), Dow. & Ry. N. P. 3.

**1806.** ——— **Drawer stated to be acceptor.** ]—In an action by first indorsee against drawer of a bill of exchange, it was proved that pltf. wrote a letter to deft., stating the bill to be dishonoured, & requiring payment, but the letter misdescribed the bill as drawn by H., the acceptor, & accepted by deft.:—*Held*: the letter contained a sufficient notice of dishonour.—*MELLERSH v. RIPPEN* (1852), 7 Exch. 578; 21 L. J. Ex. 222; 16 Jur. 366; 155 E. R. 1079.

**1807.** ——— **Name of acceptor wrongly stated.** ]—Where in a notice of dishonour of a bill of exchange the name of the acceptor was wrongly stated, but the notice was correct in other respects:—*Held*: it was a question for the jury whether deft. was

I. to of ad-  
to indorser  
3 L. C. R. 454.—**CAN.**

with the payee & first indorser ally is sufficient, although the is addressed to "C. P., Sir," & indorser is a married woman.—*MITCHELL v. BROWNE* (1865), 9 L. C. J. 168; 15 L. C. R.

indorser that he II, both of a promissory it to an has  
& after it, that the it is  
(1881), 3 N. K. L.

action on not

(indorser

Man. L. R.

**1808.** o. or  
statement—As with holder for collection. ]—A notice of dishonour given by the holder, a bank to one of two indorsers, misdescribed the bill as having been left by them for collection, whereas it had been so left by the indorsee, & it merely stated that the bill had been dishonoured:—*Held*: as deft. did not show that he was misled, the notice was to fix deft.,

5 V. L. R. 125.—**AUS.**

Notice of dishonour to the indorser of promissory note is not voided by ing the note as a note dated Jan. 1, 1841, whereas it was Jan.

described, & there other note to which the notice have applied.—*ROBINSON* (1843), 2 Kerr, 198.—**CAN.**

When note due. ]—Where a notice of the amount

stated incorrectly the day when the note became due:—*Held*: sufficient, deft. not having been misled.—*THORN v. SANDFORD* (1856), 6 C. P. 462.—**CAN.**

protected. ]—Where a note was properly presented & protested, but the notice, being dated Nov. 20, stated the note to have been on that day presented & protested, whereas in fact it was on the 19th:—*Held*: not sufficient to mislead the indorser, who was not released.—*Low* 12 C. P. 101.—**CAN.**

fell due on July 25, on which day it was duly presented for payment & protested, but the notice of protest, on that the note was this day & protested:—*Held*: the notice it, as it did not appear that the misled by the

but C. P. 281.



thereby deceived, & that being found in the negative, the verdict should be entered for pltf.—*HARPHAM v. CHILD* (1859), 1 F. & F. 652, N. P.

**1808.** — Bill described as note—Amount due misstated.]—To prove notice of dishonour of a bill of exchange for £53, dated Dec. 19, 1842, evidence was given that a letter was sent to deft. asking payment of £53 6s. 6d. "due on your dishonoured note dated Dec. 19 last":—*Held*: a sufficient notice of dishonour, although the instrument dishonoured was a bill, & not a note, & was for £53, & not £53 6s. 6d., unless it appeared that there was some other instrument to which the notice could apply, & the proof of the existence of such other instrument lay on deft.—*STOCKMAN v. PARR* (1843), 11 M. & W. 809; 1 Car. & Kir. 41; 12 L. J. Ex. 415; 1 L. T. O. S. 316; 7 Jur. 886; 152 E. R. 1031.

*Annotation*:—*Beld*. *Bromage v. Vaughan* (1846), 9 Q. B. 608.

**1809.** — As to place where bill lying.]—A bill having been dishonoured, notice was given by the holder to the first indorsee, who in due time left at the residence of the drawer his own card & address, on the back of which was written: "Bill for £30, drawn by S. on W. dishonoured, lies due as on the other side." The bill was not lying there, but at the residence of the holder, who had other bill transactions with the drawer:—*Held*: a sufficient notice of dishonour.—*ROWLANDS v. SPRINGETT* (1845), 14 M. & W. 7; 14 L. J. Ex. 227; 9 Jur. 356; 153 E. R. 366.

*Annotation*:—*Mentd.* *Armstrong v. Christiani* (1848), 5 C. B. 687.

**1810.** — As to place where bill payable.]—Notice of dishonour is not vitiated by a misdescription of the bill of exchange, which could not mislead the party receiving the notice, in respect of the bill intended.

Where notice of dishonour to the drawer described the bill correctly as to date, amount, & parties, but stated it to be payable at the L. bank, whereas it was made payable at the J. bank, & there was no evidence that the drawer had been, in fact, misled thereby:—*Held*: the notice was sufficient.—*BROMAGE v. VAUGHAN* (1846), 9 Q. B. 608; 16 L. J. Q. B. 10; 10 Jur. 982; 115 E. R. 1406; *sub nom.* *BRUMMAGE v. VAUGHAN*, 8 L. T. O. S. 137.

**1811.** Foreign bill—Indorser abroad—But resident in England.]—A bill of exchange, drawn in Jamaica, payable to deft., was indorsed by deft., to pltf. in Jamaica, where deft., who was the master of a ship, then was, but his residence was in England, he having a dwelling-house in London, where his family lived. The bill was presented for acceptance to the drawee, & refused, upon which it was immediately protested, & then sent to deft.'s house in London for payment, with notice of its non-acceptance. Deft. was not then in England, but the bill was shown to his wife, from whom payment was demanded, & she was informed of all the circumstances of non-payment, etc. In an action to recover the amount of the bill deft. objected that the notice given to deft.

as the indorser, should have been sent to Jamaica, where he was at the time when he indorsed the bill:—*Held*: pltf. was entitled to a verdict to the amount of the bill.—*CROMWELL v. HYNSON* (1796), 1, N. P.

—*Mentd.* *Goodman v. Harvey* (1836), 4 Ad. & El.

**1812.** — Statement that bill protested—No copy of protest.]—In the above action (*see* No. 1811, *supra*) deft. also contended that it was necessary, & the established usage among merchants, that when notice was given of the non-acceptance or non-payment of a bill, it should always be accompanied with a copy of the protest, but the ct. over-ruled the objection.—*CROMWELL v. HYNSON* (1796), 2 Esp. 511, N. P.

*Annotation*:—*Consd.* *Goodman v. Harvey* (1836), 6 L. J. K. B.

**1813.** — — — — —.]—In giving notice of non-payment to the drawer of a foreign bill, resident abroad, it is sufficient to inform him that the bill has been protested, without sending a copy of the protest.—*GOODMAN v. HARVEY* (1836), 4 Ad. & El. 870; 6 Nev. & M. K. B. 372; 6 L. J. K. B. 63, 260; 111 E. R. 1011.

(1874),  
— Ch. App. 591. *Mentd.* *Uther v. Rich* (1839), 10 Ad. & El. 784; *Arboun v. Anderson* (1841), 1 Q. B. 498; *Jones v. Smith* (1841), 1 Hare, 43; *Re Acraman, Ex p.* (1844), 3 Mont. D. & De G. 615.

**1814.** — Whether notice of protest must accompany notice of dishonour.]—Where the drawer of a foreign bill of exchange at the time of the drawing was in a foreign country, but returned home before it became due, at which time it was dishonoured & protested, but notice of the dishonour only, & not of the protest, was left at the drawer's house:—*Held*: that was sufficient.—*ROBINS v. GIBSON* (1813), 1 M. & S. 288; 105 E. R. 108.

*Annotations*:—*Mentd.* *Goodman v. Harvey* (1836), 4 Ad. & El. 870; *Bonar v. Mitchell* (1850), 5 Exch. 415.

— Statement that bill duly presented & returned dishonoured—Omission to state protest by notary.]—The holders of a foreign bill gave notice to the drawer that it had been "duly presented for payment, & returned dishonoured":—*Held*: that was sufficient notice that all proper steps had been taken, & it was not necessary for the notice to state in express terms that the bill had been protested by a notary.—*Re LOWENTHAL, Ex p. LOWENTHAL* (1874), 9 Ch. App. 591; 43 L. J. Bcy. 83; 30 L. T. 668, L. JJ.

**1816.** — Production of bill with notary's ticket attached thereto.]—A foreign bill of exchange, which had been protested against the acceptor, was taken by the notary's clerk, with the notary's ticket attached to it, showing a charge for acting & protesting, to the drawer's place of business, & there presented to the drawer's clerk for payment. The drawer's clerk took it into his hand, said the drawer was out & had left no orders, thereupon the notary's clerk left the usual notice that the bill lay at his office for payment. In an

of non-payment received by deft., the first of four indorsers, stated the date & parties correctly, but described it as for £38, instead of £35. The jury directed that the notice was

—CAN.

A re notice of protested, is a without

sending a copy of the protest with the  
J'NEIL Pengu (1840),  
1 Ont. Dig. 689.—CAN.

v. — No statement that bill protested—Indorser not liable.—*DELANEY v.* (1858), 3 Thom. 401.

## 276 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 4.—Notice of dishonour: Sub-sect. 6, C.; sect. 7, A.]*

action on the bill against the drawer:—*Held*: sufficient notice of dishonour had been given to the drawer.—*VIALE v. MICHAEL* (1874), 30 L. T. 463.

### SUB-SECT. 7.—PROOF OF NOTICE.

#### A. What amounts to Proof.

**1817 Promise to pay**—If holder would call again with account.]—An indorsee, 3 months after a bill became due, demanded payment of the indorser, who promised to pay it if he would call again with the account:—*Held*: the conversation being an absolute promise to pay the bill, was *prima facie* an admission that the bill had been presented to the acceptor for payment in due time, & had been dishonoured, & that due notice had been given of it to the indorsee, & superseded the necessity of other proof to satisfy those averments in the declaration.—*LUNDIE v. ROBERTSON* (1806), 7 East, 231; 3 Smith, K. B. 225; 103 E. R. 89.

*Annotations*:—*Appld.* *Patterson v. Beecher* (1821), 6 Moore, C. P. 319; *Houlditch v. Cauty* (1838), 4 Bing. N. C. 411. *Follid.* *Croxon v. Worthen* (1839), 5 M. & W. 5. *Reid.* *Jones v. Morgan* (1810), 2 Camp. 474; *Pickin v. Graham* (1833), 2 L. J. Ex. 253; *Hicks v. Beaufort* (1838), 4 Bing. N. C. 229; *Leeuan v. Kirkman* (1859), 6 Jur. N. S. 17.

**1818. — Absolute promise after maturity—Foreign bill.** In an action against the drawer of a foreign bill of exchange, a promise of payment by deft. after the bill was due, is sufficient evidence of notice of the dishonour of the bill.—*GIBBON v. COGGER* (1809), 2 Camp. 188, N. P.

**1819. —** A promise to pay a foreign bill of exchange made after it is due, is evidence to support the allegation in the declaration of regular notice to deft.—*GREENWAY v. HINDLEY* (1814), 4 Camp. 52, N. P.

**1820. —** In an action against the indorser of a promissory note or bill of exchange, it is sufficient evidence of notice of dishonour, that deft. promised absolutely to pay the note or bill after it was due.—*TAYLOR v. JONES* (1809), 2 Camp. 105, N. P.

### PART XII. SECT. 4, SUB-SECT. 7.

#### —A.

*a In general.* Notice of dishonour may be proved partly by written & partly by parol evidence.—*IR.* *IRANK* (1846), Bl. D. & Oab. 64.—*IR.*

*b —* Where a notary, who note

that referring to of entries, & finding no stated that he felt "rather at as to his having sent the notice".—*Held*: the jury were warranted in for deft.—*McDONOALL v.* 859, 8 C. P. 400.—*CAN.*

In an action by holder of a

that the not at maturity & was it no to from the of an in of it by

was *WIEDEMAN v.* *QUITTARD* (1802), 10 W. R. 110; 22 C. L. T. Occ. N. *CAN.*

*Notice sent by telegram.* A judgment was given for deft., in an action by indorser against indorsee, no proof of the contents of notice aid to have been sent by or of the telegram been received.—*MOLKAN v.* 3 R. & G. 276.—*CAN.*

**1817 i. Promise to** on  
]—A promise to pay, ed  
a hundt after it had dis  
honoured, though not amounting to a  
of notice:—*Held*: good &  
that the indorser  
that the bill had  
dishonoured.—*SYND ALI v.*  
(1870), 13 W. R. 420.—*IND.*

**1820 i. — Absolute promise after maturity.**—Where there has been a subsequent unconditional promise to pay, with a knowledge of a default on the part of the holder, the evi-  
notice with, & such  
suppo  
that due notice of has been

**1821. —** A bill was drawn & indorsed in blank by deft. & by him delivered to his partner, who afterwards forged the acceptance & passed it to pltf. The bill had been indorsed & delivered by deft. before any acceptance was upon it. Deft. having admitted his drawing & indorsement & promised to pay:—*Semble*: this was evidence of due notice of dishonour.—*WEETON v. HODD* (1854), 2 C. L. R. 848; *sub nom.* *WETTON v. HODD*, 23 L. T. O. S. 79; 18 Jur. 630; 2 W. R. 423.

*Compare Nos. 1867, 1868, post.*

**1822. — After dishonour.**—The indorsee of a promissory note may recover upon it against the payee & indorser, on evidence of a promise to pay it, made, some time after the dishonour of the note, by him to a subsequent indorsee, who then held it, without direct proof by pltf., that due notice of the dishonour was given to such payee & indorser.—*POTTER v. RAYWORTH* (1811), 13 East, 417; 104 E. R. 432.

*Annotations*:—*Follid.* *Babey v. Gilbert* (1861), 6 H. & N. 536; *Killby v. Rochussen* (1865), 18 C. B. N. S. 357.

**1823. — Before or after time for giving notice expires.**—A promise to pay the bill, whether made before or after the time for giving notice has expired, is evidence that due notice has been given.—*CORDERY v. COLVIN* (1863), 14 C. B. N. S. 374; 2 New Rep. 30; 32 L. J. C. P. 210; 8 L. T. 245; 9 Jur. N. S. 1200; 143 E. R. 491.

*Annotations*:—*Reid.* *Killby v. Rochussen* (1865), 18 C. B. N. S. 357; *Roberts v. Plant* (1895), 64 L. J. Q. B. 347.

**1824. — Letter from drawer & indorser.**—Evidence of a letter from the drawer & indorser of an accommodation bill, that the bill will be satisfied before the next term, supersedes the necessity of proving the dishonour of the bill & notice.—*WOOD v. BROWN* (1816), 1 Stark. 217, N. P.

**1825. — Knowledge of drawer who has to pay bill—Drawer acting as executor of acceptor.**—Knowledge of the probability, however strong, that a bill of exchange will be dishonoured, cannot dispense with a notice of dishonour; but know-  
that the bill has been dishonoured, where the

*BANK OF BRITISH NORTH AMERICA v. ROSS* (1844), 1 U. C. R.

**1820 ii. —** In an action by indorsee against indorser of a note, an averment of notice is supported by proof of a subsequent promise to pay, although it appears that there was in fact no proper notice.—*MCCARTHY v. PHELPS* (1870), 30 U. C. R. 51

**1820 iii. —** an action by indorsee against indorser of a promissory note, no demand on the maker's exors. or notice to deft. was proved, but a letter from deft. to pltf. was given in evidence, desiring the note to be to a friend, that deft. might get security upon the estate of the maker, & adding, "that pltf. might rely on the honorable discharge of every farthing of his demand, as he (deft.) was turning his property into cash":—*Held*: the letter dispensed with the necessity of proving notice to the indorser.—*VALLOTEN v. FURNES* (1794), *IR.*

on p.



drawer is himself the party who is to pay the bill, as exor. of the acceptor, does amount to notice.

In *assumpsit* by indorsee against drawer of a bill of exchange, the declaration, in the usual form, alleged that the bill was duly presented to the acceptor, that it was dishonoured, & that deft. had notice thereof. Deft. pleaded, that the bill was not presented to the acceptor, & that deft. had no notice of its dishonour. At the trial, it was proved that the bill was presented, on the day it became due, at the house of the acceptor, & that deft., to whom it was there shown, said that the acceptor was dead, & that he was his exor., adding a request that it might be allowed to stand over for a few days, & he would see it paid:—*Held*: there was sufficient evidence of notice of dishonour to deft.—(AUNT v. THOMPSON (1849), 7 C. B. 400; 6 Dow. & L. 621; 18 L. J. C. P. 125; 12 L. T. O. S. 531; 13 Jur. 495; 137 E. R. 159.

—*Reid*, Fielding v. Corry, [1898] 1 Q. B. 2

1826. ——— To person not holder.—Conversation in which due notice denied.]—In an action on a bill of exchange, by indorsee against drawer, evidence was given of a conversation between deft. & S., in which deft. had said, in allusion to the action, that he had several defences, one of which was that pltf. had not sent the letter to him in time. This having been left to the jury, after objection, as evidence of due notice of dishonour, & the jury having found a verdict for pltf.:—*Held*: the jury were not warranted in presuming that pltf. had given due notice.—BRAITHWAITE v. COLEMAN (1835), 1 Har. & W. 229; 4 Nev. & M. K. B. 654; 4 L. J. K. B. 152.

1827. ——— By drawer in conversation with friend.]—The drawer of a bill being asked by a friend if he was aware that the bill had been dishonoured, answered: "Yes, I have had a very civil letter from G. [an intermediate indorsee] on the subject, & I will call & arrange it." In an action against the drawer:—*Held*: the above admission relieved pltf. from the necessity of proving a regular notice.—NORRIS v. SALOMONSON (1837), 3 Hodg. 14; 4 Scott, 257; 6 L. J. C. P. 100; 1 Jur. 55.

1828. ———.]—In *assumpsit* against drawer & indorser of a bill of exchange, the issue being whether or not deft. had received notice of dishonour, a declaration by him to a party, not the holder, that he should pay the bill, & should not avail himself of the informality of notice, is evidence from which a jury may infer that deft. had due notice.—BROWNELL v. BONNEY (1841), 1 Q. B. 89; Arn. & H. 131; 4 Per. & Dav. 523; 10 L. J. Q. B. 71; 5 Jur. 6; 113 E. R. 1044.

Annotation:—*Reid*, Loeaan v. Kirkman (1859), 6 Jur. N. S. 17.

1829. ——— Request to such person to negotiate renewal.—In view of expected notice of

dishonour.]—Where, in an action by indorsee against drawer of a bill of exchange, deft. had told a witness he expected to receive by post a notice of its dishonour, & afterwards gave him a letter he received by post, & requested him to negotiate a renewal of the bill, & the letter, which had found its way to the pltf.'s hands, was not produced at the trial:—*Held*: the jury were warranted in finding no notice of dishonour had been given.—BELL v. FRANKIS (1842), 4 Man. & G. 446; 5 Scott, N. R. 460; 11 L. J. C. P. 300; 134 E. R. 183.

1830. ——— Person applying on behalf of holder.]—In an action by indorsee against indorser or drawer, any declaration by him, amounting to an acknowledgment of liability or to a promise to pay, made to any party applying on behalf of pltf., is good evidence of notice of dishonour; & although deft. is called to disprove the notice, yet, if the question be left to the jury on his credibility, & they find for pltf., the ct. will not disturb the verdict.—JONES v. O'BRIEN (1854), 2 C. L. R. 853.

1831. ——— Agent for holder.]—A promise to pay the amount of a dishonoured bill of exchange, made by deft., the indorsee, to a person applying to him on behalf of pltf., the holder, amounts to, & is evidence of, an admission on deft.'s part of notice of dishonour.—BARTHOLOMEW v. HILL (1862), 5 L. T. 756; 10 W. R. 273.

1832. Admission of liability.—Letter alluding to non-payment in ambiguous terms.—After maturity of bill.]—In an action on bills of exchange against the drawer:—*Held*: a letter bearing date subsequent to the time when the bills became due, & at a time when deft. might have received notice of the dishonour of the bills, written by deft., & alluding in ambiguous terms to bills, accepted by the acceptor of bills sued on, being returned for non-payment, was rightly left to the jury as evidence, from which they might, or might not, infer an acknowledgment of having had notice of the dishonour of the bills, upon which the action was brought.—BOOTH v. JACOBS (1834), 3 Nev. & M. K. B. 351; 3 L. J. K. B. 134.

1833. ——— Direction to raise money.]—The drawer of a bill applied to for payment said: "If the acceptor does not pay, I must, but exhaust all your influence with the acceptor first." The drawer afterwards directed appct. to raise the money on the lives of himself & the acceptor:—*Held*: such admission was not to be taken as conclusive evidence of deft.'s having received notice of dishonour.—HICKS v. BEAUFORT (DUKE) (1838), 4 Bing. N. C. 229; 1 Arn. 55; 5 Scott, 598; 7 L. J. C. P. 131; 2 Jur. 255; 132 E. R. 776.

1836 L. ——— To person not holder.]—An admission by the indorser of a bill of exchange, after it became due, the following: "I will call to settle it, or have it settled," although made to a stranger to the bill, is sufficient evidence to go to the jury that deft. had notice of  
v. KEARNEY (1842), Arn. M. & O. 111.

of receipt of admission by deft. that he had received notice of dishonour, in the of any proof that it

received too late, or any made to it, is evidence of its  
REED v. KAVANAGH (1 ), 4 All.

g. ——— In conversation.]—A notice of dishonour sent through the post office was addressed to "Edward T. Price." Deft., whose name was "Edward Price," admitted the receipt of the notice:—*Held*: the jury might infer that he had received the notice in due time, & that he was liable, notwithstanding the mistake in the

v. PRICE (1867), 3 All.

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of a to have had notice of acknowledgment of liability & a written by him to the maker, that proceeding would if the maker did not of the note b  
HALL v. HOTEL CO. (1867), 1 D. L. R. IND.

Sect. 4.—

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**1834. — Whether conclusive—Rebuttal by direct proof of no notice.**—An admission of liability by the indorser of a bill is only evidence of notice of dishonour, & cannot prevail against express evidence that no notice was given, nor will it justify the presumption that some other notice was given, where that, which pltf. proves & relies upon, turns out to be insufficient.—*FLIGHT v. COOK* (1844), 2 L. T. O. S. 369.

**1835. — Conditional as to mode of payment.**—Any acknowledgment by the drawer of a bill, of his liability to pay, or any promise to pay the amount, though conditional as to the mode of payment, is evidence to be left to the jury, of due notice of dishonour.—*CAMPBELL v. WEBSTER* (1845), 2 C. B. 258; 1 New Pract. Cas. 348; 15 L. J. C. P. 4; 6 L. T. O. S. 101; 9 Jur. 992; 135 E. R. 944.

**1836. — Funds received from acceptor—Request that holder should press acceptor.**—A. drew a bill for £10 on B., who owed him £20. The bill was payable on Saturday, Aug. 10. On the following Wednesday A. was told by the bankers of C., the holder, that they understood that he, A., had received the money to take up the bill. He said he should keep the money, as B. still owed him £10, & that he wished the bankers would sue B. on the bill:—*Held*: evidence to go to the jury that A. had received due notice of dishonour.—*JACKSON v. COLLINS* (1848), 17 L. J. Q. B. 142; 12 Jur. 305.

**1837. — In conversation.**—Where notice of dishonour was sent by letter improperly directed, & the letter did not arrive until the following day, but a few days afterwards the parties met, & in the course of conversation deft. said that he wished the matter was settled, but declined to put his name to a new bill, although he should have no objection to write a letter:—*Held*: sufficient evidence of the receipt of a notice of dishonour.—*GOODALL v. LANSFELD* (1848), 10 L. T. O. S. 376.

**1838. — Consent to order for stay of action against first indorsee on payment of debt & costs—Money provided by defendant to pay amount.**—In an action by second indorsee against drawer of a bill of exchange, deft. pleaded that he had had no notice of dishonour. Proof that the first indorsee, who had had notice of dishonour, had consented to a judge's order for staying proceedings against him on payment of debt & costs, & that deft. had provided the money to pay the amount under that order:—*Held*: not such evidence of an admission of liability by deft. as would dispense with proof of notice of dishonour.—*HOLMES v. STAINES* (1850), 3 Car. & Kir. 19, N. P.

**1834 L. — Whether**  
In an action by  
of a bill of exchange, it v  
that after the bill  
the drawer said to a

"I am in difficulties, & cannot  
it now":—*Held*: (1) that

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if they believed,

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him, they do so,

notwithstanding any such acknow-  
ledgment.—*BARNATINE v. SMYTH* (1842),  
Arm. M. & O. 383.—IR.

**1834 II. — — — — —**—In an action by  
indorsee against drawer of a bill of  
exchange, no direct evidence of notice  
of dishonour was given, but certain  
admissions of liability on the part of  
deft. were proved to have been made:  
—*Held*: such was evidence, from  
which the jury were to infer that  
of dishonour had been

**1839. Part payment of bill—Without objection to want of notice.**—In an action against the drawer of a bill of exchange, in consequence of the acceptor's default, the ct. will leave it to the jury to presume from circumstances, such as the payment of a part of the bill, without any objection to the want of notice, etc., that notice was regularly given.—*HORFORD v. WILSON* (1807), 1 Taunt. 12; 127 E. R. 733.

*Annotations*:—*Mentd.* *Nathan v. Buckland* (1818), 2 Moore, C. P. 153; *Doe d. Teynham v. Tyler* (1830), 6 Bing. 561; *Bull v. Price* (1831), 7 Bing. 237; *Crease v. Barrett* (1835), 5 Tyr. 458; *Doe d. Welsh v. Langfield* (1847), 16 M. & W. 497; *Beale v. Bond* (1901), 84 L. T. 313.

**1840. Agreement to pay by instalments—Between prior indorser & drawer—After maturity.**—In an action by indorsee against drawer of a bill of exchange, pltf. did not prove any notice of dishonour to deft., but gave in evidence an agreement made between a prior indorser & the drawer after the bill became due. It recited, that deft. had drawn the bill in question, that it was overdue, & ought to be in the hands of the prior indorser, & that it was agreed that the latter should take the money due to him upon the bill by instalments:—*Held*: this was evidence that the drawer was at that time liable to pay the bill, & dispensed with other proof of notice of dishonour.—*GUNSON v. METZ* (1823), 1 B. & C. 193; 2 Dow. & Ry. K. B. 334; 1 L. J. O. S. K. B. 75; 107 E. R. 72.

**1841. Offer—To give bill by way of compromise—No admission of liability.**—If the drawer or indorser after being arrested, without acknowledging his liability, merely offers to give a bill, by way of compromise, for the sum demanded, this does not obviate the necessity of proving notice.—*CUMING v. FRENCH* (1809), 2 Camp. 106, n., N. P.

*Annotation*:—*Reid. Re Brereton, Ex p. Bignold* (1836), 6 L. J. Bey. 17.

**1842. — To pay composition.**—An offer made by the drawer of a bill of exchange long after it was due, to pay a composition on all his debts, & not acceded to by the holder:—*Held*: sufficient presumptive evidence of due notice of dishonour.—*MARGITSON v. ARTHUR* (1828), Dan. & Ll. 157.

**1843. — To secure composition.**—It was proved, in an action against the indorser of a bill of exchange, that 2 months after it was due, it was produced to him, & inquiries were made as to the drawer & acceptor, upon which he said that, if the holder would take 10s. in the pound, he would secure it:—*Held*: sufficient to dispense with proof of notice of dishonour.—*DIXON v. ELLIOTT* (1832), 5 C. & P. 437, N. P.

**1844. — To pay part—& give warrant of attorney for balance.**—An offer, on the part of the of a bill, to pay part of the amount, &

honour of the bill:—*Held*: he  
to have gone farther, & to have dis-  
tinctly apprised them of the presump-  
tion as to the fact of notice having  
been given, which in law necessarily  
resulted from these admissions.—  
v. *POWER* (1850), 2 Ir. Jur.

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bill of  
ave  
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trial  
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of dishonour to deft. At the  
direct proof of these  
but there was evidence of deft.



the costs, & to give a warrant of attorney for the residue, will not dispense with the proof of notice of dishonour.—*STANDAGE v. CREIGHTON* (1832), 5 C. & P. 406, N. P.

**1845. Drawer's knowledge of dishonour—On account of fraud.]**—Proof that the drawer of a bill knew, 2 days after its maturity, that it was unpaid, & in the hands of a particular indorsee, & objected to pay it on the ground of fraud in the obtaining of it, is evidence to go to a jury that he had received regular notice of dishonour.—*WILKINS v. JADIS* (1831), 1 Mood. & R. 41, N. P.; *affd.* on another point, 2 B. & Ad. 188.

*Annotations* :—*Folld. Campbell v. Webster* (1845), 2 C. B. 258. *Refd. Curlew v. Corfield* (1841), 1 Q. B. 814; *Jackson v. Collins* (1848), 12 Jur. 395.

**1846. Failure of defendant to produce letter containing alleged notice—Duplicate notices written.]**—Proof that duplicate notices of the dishonour of a bill were written, & that a letter was delivered to deft., upon the dishonour of a bill, together with proof of notice to produce the letter so delivered, as containing notice of dishonour is evidence, on default of production, that deft. had notice.—*ROBERTS v. BRADSHAW* (1815), 1 Stark. 28, N. P.

—*Refd. Curlew v. Corfield* (1841), 1 Q. B. 814. *Mentd. Kine v. Beaumont* (1822), 3 Brod. & Bing. 288.

**1847. — Denial of due presentment—No denial of notice received.]**—In an action by second indorsee against drawer of a bill of exchange, the issue being whether deft. had had notice of dishonour, evidence was given, for plff., that, on the day after the dishonour, he wrote & sent a letter to deft., an attorney, which was put into the letter box at deft.'s office, the office being closed, that notice had been served on deft. to produce a letter dated & sent to him on the above day, containing notice of the bill being dishonoured, which letter deft. did not produce at the trial, & that, after the letter supposed to contain the notice of dishonour was delivered, deft. told plff.'s attorney, in answer to a threat of legal proceedings, that the bill had not been presented in time, not saying anything as to notice of dishonour :—*Held* : evidence,

having, after the writ was consented, through his attorney, to give a plea of confession for the amount, which he ultimately declined to do, on the ground that the costs demanded by plff.'s attorney were too high :—*Held* : sufficient evidence to go to the jury of everything having been done by plff. which was necessary to create a liability on the part of deft. to pay the bill.—*PARDOE v. O'CONNOR* (1848), 12 L. J. R. 63.—*IR.*

**1848 l. Conduct of drawer—Question for jury.]**—On the trial of an action against the drawer of a bill of exchange, a witness proved that he had deft. with an account of plff. amongst the items of which was the amount of the bill, & that deft. had objected to several of the charges made, but had passed over in silence the items relating to the bill. No direct evidence of presentment &

there  
of the jury, that  
of the dishonour  
*v. BEECKLEY*

*Ir.*

k. Entry in notary's  
of  
of

lived with their mother, & the proof of service of dishonour was an entry, "served on brother at residence," in a book by a deceased clerk of a notary, whose business it was to serve notices of dishonour & to make entries thereof in a book, & who had been directed to serve the notice at the residence of deft. :—*Held* : in the absence of evidence that any brother of deft. had any other residence than at their mother's house, it was a fair presumption that the had been served there, & the was warranted in leaving it to the jury to find it duly served *v. WRIGHT* (1872), p. 191.

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indorsed by him.  
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copy of a letter written by the  
addressed to deft., giving him  
dishonour, with a memorandum in  
clerk's handwriting, intimating that  
the letter had been posted :—*Held* :

to go to the jury, of a regular notice of dishonour.—*CURLEW v. CORFIELD* (1841), 1 Q. B. 814; 1 Gal. & Dav. 489; 6 Jur. 259; 113 E. R. 1848.

—*Mentd. Edmonds v. Foster* (1875), 45 L. J. M. C.

**1848. Conduct of drawer—Question for jury.]**—Where plff., in an action against the drawer of a bill of exchange, does not prove express notice given in due time of the dishonour of the bill, but relies upon certain facts in deft.'s own conduct subsequently, as showing that he had notice, & knew that he was liable to pay, those facts must be left to the jury, & the judge will not pronounce upon their legal effect without submitting the case to the jury.—*RICKETTS v. TOULMIN* (1820), 7 L. J. O. S. K. B. 108.

**1849. Proof that drawer had no effects in hands of drawee.]**—In a declaration by holder against maker of a cheque on a banker, it was alleged, that deft. had notice of the dishonour of the cheque, which was denied by the plea :—*Held* : the allegation would not be supported by proof that the drawer had no effects in the hands of the banker, although that, if alleged in the declaration, would have excused the want of notice of dishonour, but on those facts appearing from the opening of plff.'s counsel at the trial, the judge postponed the trial, & gave plff. leave to amend.—*JACKSON v. CARRINGTON* (1849), 2 Car. & Kir. 750, N. P.

**1850. Conversation some months after note dishonoured—Admitting application for payment for renewal when note due—& refusal to pay.]**—The indorser of a note admitted in a conversation with a bank manager, held 18 months after the promissory note became due, that he had been invited by the previous manager (since dead), when the note became due & was dishonoured, to pay a small sum for the renewal of the note, & had refused to do so & requested the bank to sue him on the note, & it was proved also by a clerk of the bank that a notice of dishonour had actually been written on the last day of grace. The ct. below having given judgment against the indorser :—*Held* : there was evidence on which the ct. might conclude that notice of dishonour had been

plff. had given sufficient proof of  
of dishonour.—*BLACKBURN v. WENS*  
(1857), 3 E. 35.—*E. AF.*

m. Usual course of  
Evidence that a promisee  
dishonoured, that a bank clerk in  
usual course of his business put a  
written notice of its dishonour, with a  
of others, in the place from

notice is not  
of notice of when

though it be proved that another  
of the same batch had  
properly delivered.—*BANK OF  
ZEEBAND v. PROUDFOOT*  
N. Z. L. R. 371.—*N. Z.*

o. Service of protest at house to  
which defendant had directed papers to  
be sent.]—The only evidence of notice  
of dishonour of a bill was the service  
of the protest at a house, to which  
plff., indorsee, was in the habit of  
sending papers & parcels from his  
warehouse for deft.,

of deft., but admitted the only reason  
he had for so calling them was, that  
def. had directed the papers & parcels  
to be sent to that place :—*Held* : there  
not sufficient evidence of service

## 280 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 4.—Notice of dishonour: Sub-sect. 7, A. & cl. 8, A.**

given.—**CHAPMAN v. BRITISH GUIANA BANK** (1848), 6 Moo. P. C. C. 23; 11 Jur. 25; 13 E. R. 591, P. C.

**Knowledge acquired in one capacity—Whether notice in another capacity—Same secretary to drawer & drawee company.**—The A co. drew a bill of exchange on the B co. & indorsed it over to the C co. The same person acted as secretary both for the A co. & for the B co. The bill was dishonoured, but no express notice of dishonour was given by the C co. to the A co.:—**Held**: notice of dishonour was not to be imputed to the A co. by reason of the dual position occupied by the secretary.—**Re FENWICK, STOBART & CO., DEEP SEA FISHERY CO.'S (LTD.) CLAIM**, [1902] 1 Ch. 507; 71 L. J. Ch. 321; 86 L. T. 193; 9 Mans. 205.

### *B. Admissibility of Evidence.*

**1852. Secondary evidence of written notice—Whether without notice to produce—Copy of original letter giving notice.**—Where notice of the dishonour of a bill has been given by letter, a copy of the letter cannot be given in evidence, as proof of notice of the bill having been dishonoured, unless notice has been given to produce it.—**LANGDON v. HULLS** (1801), 5 Esp. 156, N. P.

**1853.** ————]—A copy of a letter containing notice of the dishonour of a bill is admissible, without notice to produce the original.—**ROBERTS v. BRADSHAW** (1815), 1 Stark. 28, N. P.

**Annotations:**—**Follid. Kine v. Beaumont** (1822), 3 Brod. & Bing. 288. **Mentd. Curlewis v. Corfield** (1841), 1 Q. B. 814.

**1854.** ————]—The copy of an original letter, giving notice of the dishonour of a bill, is admissible in evidence, without notice to produce the original letter.—**KINE v. BEAUMONT** (1822), 3 Brod. & Bing. 288; 7 Moore, C. P. 112; 129 E. R. 1395.

**Annotations:**—**Follid. Swain v. Lewis** (1835), 2 Cr. M. & R. 408; **Mentd. Colling v. Troweek** (1827), 6 B. & C. 394; **d. Fleming v. Somerton** (1845), 7 Q. B. 58; **Toms v. Ing** (1845), 7 Man. & G. 88; **Robinson v. Brown** (1846), 16 L. J. C. P. 46; **R. v. Whitley** (1908), 72 J. P. 272; **Andrews v. Wirral R. Co.**, [1916] 1 K. B. 863.

**1855.** ————] **Bill not subject matter of action.**—An examined copy of a letter, containing notice of the dishonour of a bill of exchange which is not produced, nor the subject matter of the action, is not admissible, without notice to produce the letter sent.—**LANAUZE v. PALMER** (1827), M. 31, N. P.

.. J. C. P.

**1856.** ————] **Verbal evidence of contents of notice.**—Secondary evidence may be given of a written notice of dishonour of a bill of exchange, without notice to produce it.—**ACKLAND v. PEARCE** (1811), 2 Camp. 599, N. P.

**Annotations:**—**Reid. Kine v. Beaumont** (1822), 3 Brod. &

of the notice of dishonour to warrant the judge in directing the jury that, if they believed the evidence, they should find for plff.—**CUMMING v. HAUGHTON** (1844), 6 L. L. R. 430.—**IR.**

**p. Discontinuance on terms of action on bill—Bill delivered up—Terms not carried out.**—An action by payee against drawer of a bill of exchange was discontinued, on the terms of the acceptor placing the amount of the bill to the payee's credit with a third person, & on the acceptor's representation that that had been done, the bill

was given up to him. In an action of trover for the bill against the acceptor, the amount not having been placed to the payee's credit:—**Held**: it might be presumed that the payee had given notice of dishonour to the drawer.—**McDONALD v. EVERETT** (1847), 3 Kerr, 569.—**CAN.**

### PART XII. SECT. 4, SUB-SECT. 7.

Bing. 288. **Mentd. Edwards v. Dick** (1821), 4 B. & Ald. 212.

**1857.** ————] **Notice to produce not precise.**—A notice to produce all letters, papers, & documents touching or concerning the bill of exchange mentioned in the declaration:—**Held**: not sufficiently precise to enable plff., on non-production of the particular letter giving notice of dishonour, to give parol evidence of its contents.—**FRANCE v. LUCY** (1825), Ry. & M. 341, N. P.

**Annotations:**—**Mentd. Jacob v. Lee** (1837), 2 Mood. & R. 33; **Smith v. Sandeman** (1847), 2 Cox, C. C. 239.

**1858.** ————] **Entry made when notice sent.**

—Secondary evidence, *e.g.*, an entry made in a book when the notice was sent, may be given of a written notice of the dishonour of a bill of exchange, without any notice having been given to produce it.—**SWAIN v. LEWIS** (1835), 2 Cr. M. & R. 261; 4 Dowl. 261; 1 Gale, 182; 5 Tyr. 998; 4 L. J. Ex. 249; 150 E. R. 114.

**Annotations:**—**Mentd. Doe d. Fleming v. Somerton** (1845), 7 Q. B. 58; **Robinson v. Brown** (1846), 16 L. J. C. P. 46.

**1859. Entry in notary's book—Made by clerk who presented bill—After death of clerk.**—An entry of the dishonour of a bill of exchange, made in the usual course of business, at the time of the dishonour, in the book of a notary, by his clerk, who presented the bill, may be given in evidence in an action on the bill, upon proof of the death of the clerk who made the entry.—**POOLE v. DICAS** (1835), 1 Bing. N. C. 649; 7 C. & P. 79; 1 Hodg. 162; 1 Scott, 600; 4 L. J. C. P. 196; 131 E. R. 1267.

**Annotations:**—**Mentd. Marks v. Lahee** (1837), 3 Bing. N. C. 408; **Brain v. Preece** (1843), 11 M. & W. 773; **Doe d. v. Langfield** (1847), 16 M. & W. 497; **Morgan v. Owens** (1850), 15 L. T. O. S. 480; **Stapylton v. Clough** (—), 23 L. J. Q. B. 5; **Smith v. Blakey** (1867), L. R. Q. B. 326; **Pollard v. Gray**, **Sturla v. Freccia** (1879), 12 Ch. D. 411.

**Acknowledgment written on notice—By wife of drawer—After death of wife.**—A written acknowledgment upon the notice of dishonour by the wife of deft. that it was delivered upon the day requisite, is not admissible after her death as evidence that deft. had notice of dishonour, although it is shown that she was resident at deft.'s house, & managing his business of an inn-keeper.—**WHARTON v. WRIGHT** (1845), 6 L. T. O. S. 148; 1 New Pract. Cas. 296.

### SUB-SECT. 8.—WHEN NOTICE DISPENSED WITH.

#### *A. In General.*

See 1882 Act, s. 50 (2) (a).

**1861. Where drawer or indorser cannot be found—After due diligence.**—The holder of an

notice.]—Parol evidence of a written notice of dishonour of a bill:—**Held**: admissible, the witness proving that he had made a copy of the notice, but that he did not have & did not know where it was.—**EVANS v. HANLY** (1823), 2 Fox & S. Ir. 1.—**IR.**

### PART XII. SECT. 4, SUB-SECT.

—A.

r. of bill a

plffs. & certain

of theirs.



overdue bill of exchange went during business hours to the counting house of the drawer, for the purpose of giving notice of dishonour, and finding the counting house shut, he knocked at the door, and no one answering, he came without leaving any notice:—*Held*: those facts did not support an allegation of due notice, but were equivalent to a dispensation of notice, and ought to have been so pleaded.—*ALLEN v. EDMUNDSON* (1818), 2 Exch. 719; 17 L. J. Ex. 291; 154 E. R. 680.

*Annotations*:—*Consd.* *Studdy v. Beesty & Higgins* (1889), 60 L. T. 647. *Reid.* *Paul v. Joel* (1859), 7 W. R. 287.

**1862.** ——— Address found before action brought.]—Failure by the holder of a bill of exchange, after the exercise of reasonable diligence at the time the bill is dishonoured, to find the drawer of the bill at the address he has given does not dispense with notice of dishonour, if an address at which the drawer is to be found comes to the knowledge of the holder before action brought.—*STUDDY v. BEESTY & HIGGINS* (1889), 60 L. T. 647, C. A.

**1863.** Bankruptcy of drawer.]—The drawer of a bill of exchange became bkpt. & absconded before it was due, but his house remained open, in the possession of the messenger under a commission of bkpey. issued against him, for some time after the bill became due, & before that time the holder of the bill had notice that A. & B. were chosen assignees of bkpt.'s estate. The acceptor also became bkpt. before the bill was due, & when due it was dishonoured. The holder did not give notice of the dishonour to the drawer or leave it at his house, nor did he make any attempt to give such notice to the assignees of the drawer:—*Held*: the bill was not provable under the commission issued against the drawer.—*ROHDE v. PROCTOR* (1825), 4 B. & C. 517; 6 Dow. & Ry. K. B. 610; 3 L. J. O. S. K. B. 188; 107 E. R. 1152;

& M., indorsed two bills drawn by plffs. upon their debtors. After the bills had been drawn & indorsed they were forwarded to debtors for acceptance, & while in debtors' custody they were destroyed by fire without being accepted. Deft. had immediate notice of the destruction of the bills, & he was warned that he would be looked to for payment if they were not paid at maturity. Deft. was also required to indorse fresh bills in lieu of those destroyed, plffs. being willing to give him an indemnity; but he refused to indorse new bills. Debtors afterwards became insolvent, & the bills were not paid. An action having been brought against deft., after the due date of the bills, to obtain a decree declaring him to be liable to plffs. for the amount of the bills indorsed by him:—*Held*: in the circumstances, & after notice of the destruction of the bills, no notice of dishonour by

790.

for benefit of creditors

at request  
of maker by both.]—Deft. indorsed a promissory note made by his brother in favour of R. Afterwards, & before the due date of the note, the brother died, & for the benefit of creditors, the deed of assignment containing a clause by which the claims in consideration of the performance on his part of the terms the deed had in the meantime died, & in order to induce plffs., the of R.'s estate, to

join in his brother's deed them a written by himself, requesting them to do so, & to prove on his brother's for the amount of the note, & that the execution of the deed & the receipt of dividends by them should not be deemed a waiver of their right to recover against him as indorser any moneys due under the note. Plffs. thereupon joined in the deed in respect of the amount due under the note, & deft. himself joined in respect of all claims which he had against his brother. Plffs. received dividends under the deed out of the brother's estate. The note was at due date presented at the bank for payment, & dishonoured. No

def't.: of not only futile, but there could be no payment to maker, both plffs. & def't.

thus, by his own voluntary act, made himself the sole party responsible for payment of the note.—*REID v. TOTT* (1894), 13 N. Z. L. R.

#### PART XII. SECT. 4, SUB-SECT. 8.

##### a. What

Offer unaccepted.]—*Held* no of dishonour. of laches in ( OF NEW BRUNSWICK 7. (12), 2 Kerr, 219.—CAN

proceedings sub nom. *Re RAINS, Ex p. ROHDE* (1829), Mont. & M. 430, L. C.

*Annotations*:—*Folld.* *Re Cohen, Ex p. Johnson* (1834), 3 Deac. & Ch. 433. *Reid.* *Terry v. Parker* (1837), 6 Ad. & El. 502; *Re Bellman, Ex p. Baker* (1877), 4 Ch. D. 793.

**1864.** ———.]—The bkpey. of the drawer of a bill before it falls due does not dispense with due notice of dishonour to bkpt. or his assignees.—*Re COHEN, Ex p. JOHNSON* (1834), 3 Deac. & Ch. 433; 1 Mont. & A. 622, Ct. of R.

**1865.** Drawer not damnified by want of notice.]—The person making a cheque cannot insist on want of notice of dishonour of it, unless he has suffered by such want of notice; nor, if W. professes to have paid money to H., that H. may pay it to D., & if H. gives D. his cheque, which is afterwards dishonoured, can W. insist that D. gave him no notice, since he may bring his action against H., if the cheque has been dishonoured, & he had really paid the money to H. as he re *DEVERELL v. WHITMARSH* (1841), 5 Jur.

*See, also*, Nos. 1902, 1903, 1917, *post*.

##### B. Waiver.

*See* 1882 Act, s. 50 (2) (b).

**1866.** What amounts to waiver —Proposal to pay —By instalments—Dishonour by non-acceptance.]—If the indorsee of an inland bill, on acceptance being refused, delay giving notice to his indorser, a subsequent proposal by the indorser to pay the bill by instalments, made without knowledge of the indorsee's laches, is not a waiver of the want of notice.—*GOODALL v. DOLLEY* (1787), 1 Term Rep. 712; 99 E. R. 1336.

*Annotations*:—*Reid.* *Dunn v. O'Keeffe* (1810), 5 M. & B. 282; *Pickin v. Graham* (1833), 1 Cr. & M. 726. *Mentd.* *Orr v. Maginnis* (1806), 7 East, 3

**1867.** ——— Promise to pay.]—Though the holder may have lost his remedy by laches in not

b. ——— To give bill for In an action by indorsee of a promissory note, it appeared that payment had been refused by the maker three weeks before deft. had notice thereof from but, on being applied to then, answered, "that if plff. would sue the first indorser, if he did not pay, he, deft., would." That was refused, & deft. then offered to give a bill for the amount at 21 or 31 days:—*Held*: not sufficient to supply the want of notice in due time.—*REID v. REYNOLDS* (1794), 1 Ridg. L. & B. 85.—IR.

than of an of liability amounting to of notice.—*WATKINS v. WATKINS* (1885), 6 R. & G. 109; 6 C. L. T.

note of part of the remains, & a plea of confession with stay of execution for the remainder, made before action brought, by a person in the employment of deft.'s attorney, amount to a waiver of deft.'s right to notice of dishonour, & it lies on deft., if he deny the authority of the person who made such offer, to show that he had no such authority.—*IRAN v.* (1841), Arm. M. & C. 181.

##### 1. ——— Proposal to

of a used as in- note:—*Held*: the offer by pay it by monthly amount to tion of proof of notice of

# 282 BILLS OF EXCHANGE, PROMISSORY

Sect.

Sub-sect. 8, B.]

giving notice, against the drawer, yet a subsequent promise to the holder by the drawer, that he will see the bill paid, will support an *assumpsit*.—*HOPES v. ALDER* (1799), 6 East, 16. n.; 102 E. R. 1190.

**1868.** ——— **Admission of liability.**—An indorsee, 3 months after a bill became due, demanded payment of the indorser, who first promised to pay it if he would call again with the account, & afterwards said that he had not had regular notice, but as the debt was justly due he would pay it:—*Held*: the second conversation only limited the inference from the former, so far as the want of regular notice of the dishonour to debt. went, which objection he waived.—*LUNDIE*

*MURRAY v. AYER* (1909), 6 E. L. R. 39 N. B. R. 170.—CAN.

Failure of pro-  
In an action on a bill of re by indorsee against indorser, it appeared in evidence, that a few days after notice of dishonour, a bond was executed by the drawer & acceptor to pltf., as security for the amount of the bill, & filled up & witnessed by debt., & that execution was issued thereon at debt.'s request, & a levy made for part of the amount. Several months afterwards, debt. was arrested at pltf.'s suit for the balance due on the bill, & whilst in prison under such arrest, he voluntarily wrote as follows to pltf.'s attorney: "Having no property but my liberty, I propose, out of my industry, to pay your client £20 per year until the principal be fully discharged, never having received any value. Should any business come through your office or your client, I will allow one-half to go in discharge of as many of the next coming bills as it may be equal to the payment of." Pltf. agreed to the terms offered by the letter, but the compromise failed, the failure not being attributable to pltf.:—*Held*: supposing the notice of dishonour to be insufficient, the subsequent facts afforded evidence of a waiver of the insufficiency, & debt.'s letter was properly received in evidence for pltf. *BRUSH v. HAYES* (1839), 1 Jobb & S. 638; 1 L. L. R. 327.—IR.

In certain event

, ante.—IR.

**1868 i.** ——— **Waiver of liability.**—In an action on a promissory note, the judge found that there was no presentment at maturity, & no notice of dishonour to debt, but that debt. having acknowledged his liability to pay, such promise as a waiver of notice, & that might

as a fact that no given, was not justified in from the had been to establish a waiver. It must be that debt., when he made the relied upon, knew that the notes not been presented.—*McFATHEN v. WILLISTON* (1899), 23 N. S. R. 11.—CAN.

ii.

test has been given, if it be made with a knowledge of that fact, is a waiver of want of notice.—*Re* 3 R. de L.

**1868 iii.**

even if the averments as to notice of dishonour were insufficient, debt. was bound by his promise to pay the amount of the note on request.—*GILLESPIE v. MARSH* (1862), 1 C. P. 453.—CAN.

**1868 iv.** S. P. *BROWN v. MARSH* (1851), 1 C. P. 438.—CAN.

**1868 v.** ——— **Pleading.**—Where the indorser of a note is aware of the insolvency of the maker & knows that the note has not been presented to the maker for payment, & that he has not himself had any legal notice of the dishonour of the note, & that he has been discharged from the obligation of paying it by the laches of the holder, but nevertheless gives a distinct promise to pay, he thereby waives the objections, but in such case the declaration, instead of averring a presentment where such was never made, must state the facts relied on as constituting a waiver of the omission to make such presentment.—*NEW-FOUNDLAND SAVING'S BANK v. MOPHERSON* (1860), 4 Nfld. L. R. 462.—NFLD.

**1868 vi.** ——— **Reck.**—*REED v. MERCER* (1865), 16 C. P. 279.—CAN.

**1868 vii.** ——— **Deft.**—after notice of non-payment, promised to pay. The jury were directed that the subsequent promise could not avail, as it was not averred in the declaration:—*Held*: a misdirection.—*THOMPSON v. COTTERELL* (1854), 11 U. C. R.—CAN.

**1868 viii.** ——— **Indorser.**—an indorser, knowing that notice had not been given, promised to pay:—*Held*: pltf. was entitled to a verdict on a plea denying notice. *Seem*: it was only necessary to plead that notice was dispensed with, when an agreement to that effect had been made before the time for giving it.—*SHAW v. SALMON* (1860), 19 U. C. R. 512.—CAN.

**1868 ix.** ——— **Sub-**promise by the indorser in of the defect in due presentment, though he was aware at the time that he was discharged for want of due notice, is a waiver of the want of notice.—*NOWLIN v. ROACH* (1843), 2 Kerr, 337.—CAN.

**1868 x.** ——— **Where the** indorser of a promissory note promised payment thereof, knowing that he had not received due notice of dishonour, & in circumstances from which it might inferred that he was aware of the

to the jury on the of found for pltf., of. to disturb the vi (1842), 2

(1806), 7 East, 231

225; 103 E. R. 89.

*ms*:—*Appl. Patterson v. Beecher* (1821), 6 Moore, C. P. 319; *Houlditch v. Cauty* (1838), 4 Bing. N. C. 411. *Fold. Croxon v. Worthen* (1839), 5 M. & W. 5. *Reid. Jones v. Morgan* (1810), 2 Camp. 474; *Pickin v. Graham* (1833), 2 L. J. Ex. 253; *Hicks v. Beaufort* (1838), 4 Bing. N. C. 229; *Lecan v. Kirkman* (1859), 6 Jur. N. S. 17.

Compare Nos. 1818–1821, ante.

**1869.**

**Conditional on receipt of bill—Request to return bill to prior indorsers.**—A letter written by the indorser of a bill, who had been applied to for payment, after several days' laches, telling pltf. that he would not remit till he received the bill, & desiring pltf., if he considered debt. as unsafe, to return the bill to T. & Co., who were prior indorsers on the bill, & also bankers at

**1868 xi.** ——— **Notice of dishonour.**—*Held*: waived by debt.'s promise to pay the note.—*FOSTER v. WOODWORTH* (1908), 8 W. L. R. 688.—CAN.

**xii.** ——— **Indorser of a promissory note, who, being aware of an omission to give him due notice of dishonour, gives a written promise to pay the note, thereby waives the notice, & is liable on the note.**—*MARTIN HARGREAVES CO. v. WRIGLEY* (1914), 30 W. L. R. 92; 7 W. W. R. 760.—CAN.

**1868 xiii.** ——— **If there is an unequivocal promise to pay on the part of the indorser of a promissory note he is deemed to have waived notice of dishonour.**—Two letters written by the indorser of a note to the holders, in one of which he said, "I hope you can give an extension of time," & in the other, "I think I can promise that you will receive it," i.e., the amount of the note, "in a short time":—*Held*: sufficient, as a promise to pay, to constitute a waiver of notice.—*SWIFT CANADIAN CO. v. DUFF & ALWAY* (1917), 38 O. L. R. 163.—CAN.

**1868 xiv.** ——— **Where a bill of exchange was not presented for payment to the acceptor until a month after it fell due:—Held**: a promise by an indorser of the bill to pay it, but that he was then short of money, did not dispense with proof of notice of dishonour, unless the indorser made the promise with full knowledge of all the circumstances. *Seem*: whether the indorser intended to waive the objection or not was a question for the jury.—*DONNELLY v. HOWIE* (1833), 2 Ir. L. Rec. N. S. 79; *Hayes & Jo.* 436.—IR.

**1868 xv.** ——— **The drawer of a bill of exchange:—Held**: discharged, for want of due notice of nonpayment by the acceptor, notwithstanding subsequent promises to pay.—*M'LAUGHLIN v. M'DONNELL* (1794), Ridg. L. & S. 93.—IR.

**xvi.** ——— **The drawer & indorser of a bill having written a letter asking indulgence, & promising to settle it, is not entitled to plead that, when he wrote the letter, of the legal effect of non-notification of dishonour, so as to enable him to found an alleged non-notification as a defence**

(Cl. of

cases on p. 276.

promise by an indorser to pay in land, or see that pltf. should nothing, waives any objection.—*BURKE v. ELLIOTT* (1857), U. C. R. 610.—CAN.



deft.'s **Held** not to be such  
a waiver of laches & promise to y, but deft., on  
that, in law, he was

Pickin v. Graham  
Cauty (1838), 4 Bing. N. C. 41

1870.

By drawer's agent to indorsers  
not unconditional & before notice due.]

—A bill was drawn in Yorkshire & accepted, payable in London. During its currency, the affairs of the acceptor became embarrassed to the knowledge of the last indorser, who being in Yorkshire on the day the bill became due told the person who indorsed it to him, that it would probably not be paid. It was dishonoured in London on that day, but before notice of that fact could arrive, the agent to the drawers called on the last indorser at R. in Yorkshire, & in the course of conversation about the bill being likely to come back, said: "I suppose there will be no alternative but my taking up the bill, & if you will bring it to Sheffield on Tuesday I will pay the money." The bill was not returned by the holder to the last indorser until 10 days after that conversation, & the drawers did not receive notice of dishonour in due time:—**Held**: the terms of the promise made to the indorser by the agent to the drawers not being unconditional, & having been made at a time when no laches could have been committed in giving due notice of dishonour, did not waive the necessity to give that notice.—**PICKIN v. GRAHAM** (1833), 1 Cr. & M. 725; 3 Tyr. 923; 2 L. J. Ex. 253; 149 E. R. 591.

Distd. Houlditch v. Cauty (1838), 4 Bing. N. C. 411. **Reid**. Singer v. Elliott (1887), 4 T. L. R. 34.

1871. — By drawer on default of acceptor

—Direction to raise money.]—The drawer of a bill being applied to for payment, said: "If the acceptor does not pay, I must, but exhaust all your influence with the acceptor first." The drawer afterwards directed appct. to raise the money on the lives of himself & the acceptor:—**Held**: that admission was not to be taken as conclusive evidence of deft.'s having waived notice of dishonour of the bill.—**HICKS v. BEAUFORT (DUKE)** (1838), 4 Bing. N. C. 229; 1 Arn. 55; 5 Scott, 598; 7 L. J. C. P. 131; 2 Jur. 255; 132 E. R.

1872.

By drawer after dishonour.]

Where the drawer of a bill of exchange has had

1869 II. — Where, in an action by indorsee against indorser of a promissory note, it was proved that

due, acknowledged the ment to be his, & promised that if the note were held for six weeks he would pay it, which was complied with:—**Held**: the promise removed the objection arising from the want of notice, there being no evidence that deft. was ignorant of his not being liable.—**MADDOCK v. RIVETT** (1794), Ridg. L. & S.

of liability.]—If there is an unequivocal admission of liability on the part of the indorser of a promissory note he is deemed to have waived notice of dishonour.

Two letters written by the of a note to the holders, in one of

of time," & in the think I can promise that you will receive it," i.e., the amount of the note, "in a short time."—**Held**: sufficient, as an admission of liability, to constitute

of notice.—**SWIFT CANADIAN Co. v. DUFF & ALWAY** (1917), 38 O. L. R. 163.—**CAN.**

bill of exchange refused to pay it, but no notice was given to the drawer, who subsequently returned it in a list of his debts to his creditors. **Qu.**: whether

of a (1794), Ridg. L. & S. **IR.**

bill of exchange having admitted, after bill had become due, that he liable to the payment of it:—**Held**: he thereby dispensed with proof of notice of dishonour. (1836), Jo. 43; 1 L. L. R. 89.—**IR.**

Where the indorser of a bill of exchange was discharged for want of notice of non-payment:—**Held**: unequivocal circumstances, though implying admission by the indorser of his but

notice of the , but  
quently to pay it:—  
mise does not admit the notice, but merely waives it.—**CHAPMAN v. ANNETT** (1844), 1 Car. & Kir. 552; subsequent proceedings (1845), 4 L. T. O. S. 99, 376.

1873. — A count by indorsee against drawer of a bill of exchange, alleging presentment & dishonour, & due notice thereof to deft., is sustained by proof of a subsequent promise by deft. to pay, notwithstanding it is proved, or admitted, that due notice of dishonour was not given, & the ct. will, if necessary, amend the declaration, by alleging a waiver of notice.—**KILBY v. ROCHUSSEN** (1865), 18 C. B. N. S. 357; 144 E. R. 483.

1874. — Coupled with request for time.]

In an action by indorsee against indorser, it appeared that deft., upon being told that the holders of the bill were about to take proceedings against him on it, said that he would pay the bill if time to pay it were given him:—**Held**: evidence, from which the jury might infer that he had waived the right to notice of dishonour.—**WOODS v. DEAN** (1862), 8 B. & S. 101; 1 New Rep. 19; 32 L. J. Q. B. 1; 7 L. T. 561; 11 W. R. 22; 122 E. R. 89.

Annotations:—**Apld.** Cordery v. Colville (1863), 32 L. J. C. P. 210. **Reid**. Roberts v. Plant (1895), 64 L. J. Q. B. 347.

1875. — After expiration of time for giving notice.]—If the drawer of a bill of exchange, after the time for giving notice of dishonour has expired, promised to pay the bill, that is a waiver of notice, & if there is no plea of waiver, the ct. will add such a plea.

A promise to pay the bill before the time for giving notice has expired may also be used as evidence that notice has been dispensed with, & a promise to pay made after the time for giving notice has expired is evidence that notice has been waived (**BYLES, J.**).—**CORDERY v. COLVIN** (1863), 14 C. B. N. S. 374; 2 New Rep. 30; 32 L. J. C. P. 210; 8 L. T. 245; 9 Jur. N. S. 1200; 143 E. R. 491.

Annotations:—**Reid**. Kilby v. Rochussen (1865), 18 C. B. N. S. 357; Roberts v. Plant (1895), 64 L. J. Q. B. 347.

1876. — On discontinuance of action & payment of costs.]—Deft., having been sued by plff. on a bill of exchange, wrote the following to plff.: "Without prejudice. I never had any notice of the dishonour of this bill, but,

to a positive promise to pay, was not sufficient to revive the debt.—**HURK v. MOLLOY** (1794), Ridg. L. & S. 145.—**IR.**

—An indorser of a note who, before it becomes due, being informed of the bankruptcy of the maker, says to the payer & holder that he, the indorser, "will have to provide for the note," does not, as a matter of law, dispense with the giving of due notice of dishonour. In such a case all the circumstances must be left to the jury, & the jury must say whether or not the indorser has dispensed notice of dishonour.—**WIGGINS v. BELL** 15 N. Z. L. R. 540.—**N.Z.**

Where on the same a cheque was dishonoured, deft. paid £150 to the holder on account of it: **Seable**: to excuse notice of non-payment he declared that he was ignorant of such dishonour.—**WOOD v. STAPLETON** (1855), 15 U. C. R. 419.—**CAN.**

. 4.—

if the debt will be accepted without costs, I do not want H. to be the loser of it, & I would give a cheque." On the receipt of the letter pltf. took out a rule to discontinue the action on payment of costs. The costs were taxed, but before they were paid another action on the same bill was brought. At the trial the letter was admitted as evidence of waiver of notice of dishonour, & a verdict was found for pltf.:—*Held*: the letter was a conditional offer to pay the bill on the discontinuance of the action & payment of costs, & the condition having been accepted & carried out, it became admissible as evidence of such waiver.—**HOLDSWORTH v. DIMSDALE** (1871), 24 L. T. 360; 19 W. R. 798.

**1877.** — **Promise by indorser to continue guarantee—In certain event.**—On Feb. 16, the day before a bill of exchange, drawn by pltf., accepted by M. & Co., & indorsed by deft., became due, the acceptors wrote to pltf. respecting the bill, & pltf. replied by a letter to the effect that he would proceed on the bill unless he had the continued guarantee of deft. The correspondence was sent by M. & Co. on Feb. 17 to deft., who thereupon wrote a letter, which contained the following passage: "If, as you propose, the drawer is willing to hold the bill over until you come to an arrangement for payment of same, I am willing to continue my guarantee as far as concerns the bill":—*Held*: the letter & the whole action taken by deft. amounted to a waiver of notice of dishonour.—**SINGER v. ELLIOTT** (1887), 4 T. L. R. 84; *affd.* on other grounds, 4 T. L. R. 524, C. A.

**1878.** — **Payment — By drawer.**—*Semble*: a defence of payment by the drawer is a waiver of laches on the holder.—**STURGES v. DERRICK** (1810), Wight. 76; 145 E. R. 1180.

**1879.** — **Intimation by party entitled to notice that bill will be dishonoured—After act of bankruptcy committed.**—Want of notice to the bkpt.-drawer of bills of exchange of the dishonour of one of the bills may be supplied by evidence of his acknowledgment to the holder, when asked if the bill would be paid, that it would not, though such acknowledgment were made after the act of bkptcy. committed.—**BRETT v. LEVERT** (1811), 13 East, 213; 104 E. R. 951.

*Annotations*: **Conrad, Smallcombe v. Bruges** (1824), 13 Price, 130. **Ridd, Hill v. Hoap** (1823), Dow. & Ry. N. P. 57. **Mentd. Ex p. Douthat** (1820), 4 B. & Ald. 67.

**1880.** — **Request to holder to accept composition offered by acceptor.**—An offer of

composition by the acceptor of several bills of exchange to the holder, in the presence of the drawer, accompanied by a declaration that the acceptor could not & would not provide for them when due, does not dispense with the necessity of giving notice of their dishonour to the drawer, although the drawer urged the holder to agree to the composition.—**Re BRERETON, Ex p. BIGNOLD** (1836), 2 Mont. & A. 633; 1 Deac. 712; 6 L. J. Bcy. 17, Ct. of R.

**1881.** — **Promise to pay on future day.**—*Assumpsit* on two bills of exchange by indorsee against his immediate indorser, averring notice of dishonour. Deft., by his plea, traversed the notice of dishonour of the bills as alleged. Pltf., in order to support that issue, proved that on the day when the first bill became due, deft. called upon him & told him that he knew neither of the bills would be paid, that it was no use sending him a twopenny post letter next day to give him notice, as it was not worth the money, & that he would send pltf. money in part payment of the bills on a future day:—*Held*: that was not evidence of notice of dishonour, but of a dispensation with it, & it ought to have been so alleged in the declaration.—**BURGH v. LEGGE** (1839), 5 M. & W. 418; 8 L. J. Ex. 258; 3 Jur. 823; 151 E. R. 177; *sub nom.* **BIRD v. LEGGE**, 7 Dowl. 814.

—*Ridd, Campbell v. Webster* (1845), 2 C. B. 258; *Carter v. Flower* (1847), 16 M. & W. 743; *Caunt v. Thompson* (1849), 7 C. B. 400; *Sands v. Clarke* (1849), 8 C. B. 751; *Pottinger v. Neaves* (1854), 3 W. B. 72; *Kilby v. Rochussen* (1865), 18 C. B. N. S. 357.

**1882.** — **Notice of dishonour of a bill of exchange is waived when that takes place between the parties which is equivalent to an intimation by the party entitled to notice, that he is aware the bill will be dishonoured & that he will ultimately be looked to for payment.**—**COULCHER v. TOPPIN** (1886), 2 T. L. R. 657, C. A.

**1883.** — **Statement by drawer that he has no regular residence—& that he will see if acceptor has paid.**—The drawer of a bill of exchange, a few days before it became due, stated to the holder that he had no regular residence, & that he would call & see if the bill was paid by the acceptor:—*Held*: in the circumstances he was not entitled to notice of its dishonour.—**PHIPSON v. KNELLER** (1815), 4 Camp. 285; 1 Stark. 116, N. P.

—*Ridd, Hill v. Hoap* (1823), Dow. & Ry. N. P. 57.

**1884.** — **Verbal agreement postponing time of payment—Between maker & indorser—Indorsement as surety.**—In an action on a promissory

mistake as to  
A bill, which had been  
as not presented for payment  
at maturity, nor was notice of dis-  
honour given to the indorser, as  
quised by statute to avoid discharge  
the indorser's liability. After the  
was due a payment to ac  
made by the indorser, under  
not an indorser, but a joint  
liable in payment. In an action for

the  
the  
had been rebutted  
the

**WYTHE (MICHAEL)**  
(1812) 8 C. 425; 49  
423; 1 B. L. T. 134.—**SCOT.**

**1881.** — **Intimation by party en-  
titled to notice that bill will be dis-  
honoured—Promise to send funds to  
meet note.**—Where the indorser of a  
note told the indorsee, before it was  
that he knew it would not be paid,  
& promised to send money to the bank  
where it was payable, but did not:—  
*Held*: evidence for the jury of dispen-  
sation of notice of dishonour by waiver.  
—**WRIGHT, HEATON & Co. v. BARNETT**  
(1892), 13 N. S. W. L. R. 206.—**AUS.**

writes to the holder to make him  
it unnecessary to give him notice of  
where he states  
maker to be insolvent, such a letter,  
though written before the note has  
will be construed as a dis-  
of notice.

action by in-  
dorser against indorser upon a bill of  
exchange, drawn by B. & due Apr. 21,  
1845:—*Held*: (1) the following letter, in  
the handwriting of deft., & addressed  
to pltf., & dated Apr. 22, 1845, was  
evidence of which had been altered so as  
render it uncertain whether it had been  
written on Apr. 21 or 22: "You need  
not give me any notice of the non-  
payment of C. or B.'s bill, which I  
ind to you, & which I am sure were  
not paid the day demanded.—Due this  
C. for £20, R. £130," was evidence  
from which the jury were at liberty  
to infer notice to deft. of the  
the

partners



note, indorsed by deft. to pliffs., payable at 12 months after date, a verbal agreement entered into between him & the maker when it was drawn, that it was not to be demanded until estates of the maker had been sold, & that deft. indorsed such note as a surety only, cannot be received in evidence as a waiver of the notice of its dishonour.—**FREE v. HAWKINS** (1817), 8 Taunt. 92; 1 Moore, C. P. 535; 129 E. R. 317.

*Annotations:—***Reld.** Woodbridge v. Spooner (1819), 3 B. & Ald. 233; Moseley v. Hanford (1830), 10 B. & C. 729; Spartali v. Benecke (1850), 10 C. B. 212; Abrey v. Crux (1869), L. R. 5 C. P. 37.

**1885. Order countermanding payment.—Given by drawer to drawee.]—**A declaration by payees against drawers of a bill of exchange, averred presentment to & non-payment by drawers, neither of which averments was proved:—**Held:** notice to the drawers was waived, by proof of an order given by the latter to the drawees not to pay the bill if presented.—**HILL v. HEAP** (1823), Dow. & Ry. N. P. 57, N. P.

*Annotation:—***Mentd.** Radakissen & Doss v. Ramchurn Mullick (1851), 2 C. L. R. 1667, n.

**1886. — Request for renewal.]—**on bill of exchange against drawer. Plea, no notice of dishonour. Pltf. proved the service of a written notice of dishonour, signed by his clerk, & that deft. had requested pltf. to allow him to renew the bill:—**Held:** whether the notice was good or not, deft. had waived notice by asking for indulgence.—**KING v. HULME** (1843), 2 L. T. O. S. 266, N. P.

**1887. — Application by drawer on behalf of acceptor.]—**An application by the drawer of a bill, on behalf of the acceptor, for time:—**Held:** (1) evidence, from which a jury might infer that he had authorised an arrangement for renewal, dispensing with notice of dishonour; (2) after dispensation no notice was necessary.—**NORTH STAFFORDSHIRE LOAN & DISCOUNT CO. v. WYTHIES** (1861), 2 F. & F. 563, N. P.

**1888. — Letter expressing past intention to pay.—Written by drawer to indorsee.]—**In an action by indorsee against drawer of a bill of exchange, a letter of deft., saying: "You know I meant to call upon you immediately after the 24th with the money. E. [the acceptor] is an old & intimate friend of mine":—**Held:** sufficient evidence of a waiver of notice of dishonour.  
**v. GIBSON** (1847), 16 L. J. C. P. 249.

*bound.]—*A., B., & C. were the drawers of three bills. Before the bills fell due A. retired, after which the business was carried on by B. & C. as a new firm. The acceptors having become bkpt., B. & C. agreed with the holders to dispense with notice of dishonour, & to pay interest on the balance not recovered from the estates of the acceptors. B. & C. having also become bkpt.:—**Held:** the holders were entitled to rank on the estates of A., bkpt., the objection of want of intimation to him of the dishonour not being well founded.—**MURKIN v. I**  
**So. Jur. 495.—SCOT.**

*indorser as to one & as to result of*  
*ment by the*  
*of a dishonoured note to*  
*he would see the maker about it, &*  
*subsequent statement that he had*  
*the maker, who promised to pay as*  
*with a request not to*  
*of* *of*

notice of dishonour.—**BRITTON v. 19 A. R. —CAN.**

*Application for*  
*notice of non-*  
*payment, it appeared that the notice,*  
*though carelessly mailed by the notary*  
*on the day of protest to a wrong*  
*address, had been received by deft.*  
*about a week after, & there was some*  
*proof of his having applied to*  
*for further time for*  
*jury were directed that*  
*notice was insufficient, but*  
*found for pltf., & the ct., though*  
*agreeing with the direction, refused to*  
*interfere.—***LEITH v. O'NEILL** (1860),  
19 U. C. R. 333.—**CAN.**

**1886 li. —**Where no notice of dishonour was proved, but it was sworn that deft., the indorser, had asked for time, & promised to pay, although he said he had received no notice, the  
**OF UPPER CANADA v. COOLEY**  
4 O. S. 17.—**CAN.**

**1889. — Intimation of inability to pay.]—**Notice of dishonour by the maker of a promissory note having been omitted to be given to the indorser, if he writes, in answer to an application for payment, pointing out the hopelessness of suing him, as he had nothing but 7s. 6d. a day, & saying: "Had circumstances been different, you may rest assured no application would have been needed," is not evidence of waiver of notice.—**LECAAN v. KIRKMAN** (1859), 6 Jur. N. S. 17; 7 W. R. 490.

**1890. — Allowing judgment by default in action by party other than party suing.]—**If a party, who has not had due notice of the dishonour of a bill of exchange, thinks fit to acknowledge his liability, though he does so to a party other than the person who afterwards sues upon the bill, that acknowledgment is sufficient to enable the latter to maintain an action on the bill.

A. indorsed a bill to B., who indorsed same to C. A. had no notice of dishonour. C. brought an action on the bill against both A. & B., who allowed judgment to go by default. B. paid the bill & sued A.:—**Held:** A. having his liability on the bill by suffering judgment by default in an action by C., could not set up the want of a notice of dishonour as an answer to an action by B.—**RAHEY v. GILBERT** (1861), 6 H. & N. 536; 30 L. J. Ex. 170; 3 L. T. 752; 9 W. R. 386; 158 E. R. 220.

*Annotations:—***Reld.** Woods v. Dean (1862), 11 W. R. 22; Cordery v. Colvin (1863), 14 C. B. N. S. 374; Killby v. 18 C. B. N. S. 357.

**1891. — Correspondence between parties.]—**Notice of dishonour:—**Held:** waived by the correspondence between the parties.—**CAPE OF GOOD HOPE BANK v. BULL, BEVAN & CO.** (1887), 3 T. L. R. 621, C. A.

**1892. Effect of waiver.—Coupled with admission of liability for smaller amount.]—**If the drawer of a bill for £200 not having received due notice of its dishonour, says, that he does not mean to insist upon want of notice, but adds that he is only bound to pay £70, the whole of his statement must be taken together, & the holder in an action against him can only recover to the amount of the £70.—**FLETCHER v. FROGOATT** (1827), 2 C. & P. 569, N. P.

**1893. — On acceptor's representatives.]—**In a suit by a master, who was also part-owner,

**1886 lii. —**Pltf. brought an action on a bill & two notes against the drawer of the bill, of which no notice of dishonour had been given, but pliffs.' agent swore that after its maturity, in conversations with him respecting the whole liability, appeared willing to pay if time given, & said that if he & his the acceptor, got time it would right, but he said that the bill was particularly mentioned, & no made relating to it specifically not sufficient to warrant a verdict for it.—**BANK OF MONTREAL v. SCOTT**, 24 U. C. R. 115.—**CAN.**

**1. — Allowing judgment by de-**  
**two indorsers, who at**  
**of indorsing were partners,**  
**that neither he nor his partner**  
**ad due notice of non-payment:—**  
**the fact of the partner of the**  
**having suffered judg-**  
**did not operate as an**  
**notice as against deft.**

**Sect. 4.—Notice of dishonour: Sub-sect. 8, B. & C.]**

against ship & freight for wages & disbursements, the ct. confirmed the registrar's report allowing the master's claim, in priority to the mtgees. in possession, for the following disbursement, viz., for a bill of exchange drawn by the master, of the dishonour of which he had received no notice, & for which it was contended he was no longer liable, on the ground, that, as the whole principle of notice of dishonour was founded upon the notion of benefitting the drawer, & as the drawer had not only not been injured by the absence of notice, but had taken no such objection as a defence, it was not competent to defts., mtgees. in possession, representing the acceptor, to set up an objection on the ground of want of notice, & to contend that the drawer was no longer liable on the bill.—**THE PERONIA** (1868), L. R. 2 A. & E. 65; 37 L. J. Adm. 60; 17 L. T. 619; 16 W. R. 585; 3 Mar. L. C. 54.

**Annotations:—**Mentd. *The Daring* (1868), L. R. 2 A. & E. 200; *The Marco Polo* (1871), 24 L. T. 804; *The Jenny Lind* (1872), L. R. 3 A. & E. 329; *The Hope* (1873), 28 L. T. 287; *Re Rio Grande Do Sul S.S. Co.* (1877), 5 Ch. D. 382; *The Fairport* (1882), 8 P. D. 48; *The Ringdove* (1886), 11 P. D. 120; *Hamilton v. Baker*, *The Sara* (1889), 14 App. Cas. 209; *The Orienta*, [1894] P. 271; *The Ripon City*, [1897] P. 226; *The Elmville*, [1904] P. 422; *The Marie Glacier*, [1914] P. 218; *Glamorgan Coal Co. v. Glamorganshire Standing Joint Committee*, *Powell Steam Coal Co. v. Same*, [1916] 2 K. B. 206.

**1894. — Whether waiver of non-presentment for payment.]—**The drawer of a bill, after its maturity, wrote a letter to the holder in the following terms: "I accept notice of non-payment of my draft, & admit my liability to you in every manner as though same had been in a regular way." The bill had not, in fact, presented for payment, but of that the drawer, when he wrote the above letter, was ignorant: *Held*: there had been no dispensation by the drawer of the consequences of non-presentment for payment.—**KEITH v. BURKE** (1885), Cab. & El. 551.

**1895. — On subsequent parties.]—**A waiver of notice enures to the benefit of the holder of a bill & all indorsers subsequent to the party to whom the waiver is made.—**COULCHER v. TOPPIN** (1886), 2 T. L. R. 657, C. A.

**Waiver of non-presentment for payment generally.]**  
Nos. 1578–1583, ante.

C. As regards

1882 Act, s. 50 (2) (c).

—**PRIGNET v. MCKENZIE**  
C. P. 308.—**CAN.**

on the waiver of

**LUMBER v. r.**  
(1914), 26 W. L. R.

**PART XII. SECT. 4, SUB-SECT. 8.**

—C.

1896

partner.]—The mere fact that drawer & acceptor of a bill are not give rise to the that they are partners in

that the bill was drawn by one of on behalf of both. In such a case the not also a drawer, so as to

**Negotiable Instruments Act,**  
s. 98 (c).—**JAMBU RAMANWAMY**  
**VATHAN v. SUNDARAJA CHETTI** (1902),  
L. L. R. 26 Mad. 239.—**IND.**

1. Drawee or acceptor under  
to or

If the holder of a bill of

in hands of the drawee, as an excuse for not giving notice of dishonour, that fact should be stated in the declaration, & if notice is averred, it must be proved to enable ptfr. to recover on the special count. If a bill is drawn for the balance of an account acknowledged to be due to ptfr. from the drawer, who has no funds in the hands, ptfr. may recover the

stated, if, in common of he is unable alleging the excuse for the

**1896. Drawer & drawee same person—Bill drawn by firm on one partner.]—**In an action against the drawers of a bill of exchange, drawn by a firm upon one partner, it is unnecessary to prove that the drawers had notice of the bill being dishonoured.—**PORTHOUSE v. PARKER** (1807), 1 Camp. 82, N. P.

**Annotations:—***Apld.* *Caunt v. Thompson* (1849), 7 C. B. 400. *Reid. Hill v. Heap* (1823), Dow. & Ry. N. P. 57; *Powles v. Page* (1846), 3 C. B. 16.

**1897. — Bill considered as promissory note.]—**O. at Rio drew on O. in London a bill at 30 days' sight. There was evidence, from which a jury might infer that drawer & drawee were the same person:—*Held*: the bill must be considered as a mere promissory note, the maker of which would not be entitled to notice of dishonour & O., the drawer, was not discharged by want of notice of non-acceptance.—**ROACH v. OSTLER** (1827), 1 Man. & Ry. K. B. 120; 6 L. J. O. S. K. B. 48.

**1898. Drawee or acceptor under no obligation to accept or pay bill—Absence of effects in hands of drawee or acceptor.]—**A., a creditor of B. to the amount of £115 3s. 8d., took his bill for £20 on C. who had not then, nor afterwards, any effects of B. in his hands. The bill when due was dishonoured, & no notice thereof was given by A. to B.:—*Held*: A.'s demand on the bill was not discharged, but he might sue out a commission of bkpey. against B., & his debt would support it.—**BICKERDIKE v. BOLLMAN** (1786), 1 Term Rep. 405; 99 E. R. 1165.

**Annotations:—***Apld.* *Rogers v. Stephens* (1788), 2 Term Rep. 713. *Distd.* *Clegg v. Cotton* (1802), 3 Bos. & P. 239; *Orr v. Maginnis* (1806), 7 East, 359. *Follid.* *Legge v. Thorpe* (1810), 12 East, 171. *Consd.* *Brown v. Maffey* (1812), 15 East, 216. *Distd.* *Rucker v. Hiller* (1812), 16 East, 43. *Consd.* *Thackray v. Blackett* (1812), 3 Camp. 164. *Apld.* *Claridge v. Dalton* (1815), 4 M. & S. 226. *Distd.* *Cory v. Scott* (1820), 3 B. & Ald. 619. *Consd.* *Lastite v. Slatter* (1830), 6 Bing. 623; *Carter v. Flower* (1847), 16 M. & W. 743; *Foster v. Parker* (1870), 2 C. P. D. 18. *Reid.* *Goodall v. Dolley* (1787), 1 Term Rep. 712; *Kemble v. Mills* (1840), 1 Man. & G. 757; *Turner v. Samson* (1876), 2 Q. B. D. 23. *Mentd.* *Hill v. Heap* (1823), Dow. & Ry. N. P. 57; *Cave v. Mills* (1861), 8 Jur. N. S. 363; *Re Overend, Gurney, Ex p. Swan* L. R. 6 Eq. 344.

— **Dishonour by non-acceptance.]**  
—The objection arising from want of notice of non-acceptance of a bill of exchange from the holder to the drawer is done away by showing that the latter had no effects in the hands of the drawee at the time. *Qu.*: how far this rule holds, if the drawer show from other circumstances that in fact he sustained an injury for want of

count.—**EMERSON v. GARDINER** (1849), 1 All. 451.—**CAN.**

**1898 II. —**—Where the holder of a bill of exchange relies on no funds in hands of the drawee as an excuse for not giving notice, such fact should be in the declaration.—**MERRITT v. —CAN.**

**1898 III.**

taking in payment an order on a firm in St. John's, where on sentation same was dishonoured, drawers having no effects. *Ptfr.* on the common counts, treating the bill of exchange as a nullity & relying on the original contract. At the hearing no evidence of notice of

no necessity for notice in as between the original parties



such notice.—**ROGERS v. STEPHENS** (1788), 2 Term Rep. 713; 100 E. R. 384.

**Fold.** *Legge v. Thorpe* (1810), 12 East, 171. **Reid.** *Orr v. Maginnis* (1806), 7 East, 359; *Patterson v. Becher* (1821), 6 Moore, C. P. 319. **Mentd.** *Armani v. Ique* (1844), 13 M. & W. 443; *Campbell v. Webster*, 2 C. B. 258; *Bonar v. Mitchell* (1850), 5 Exch. 415.

**1900.** ——— **Drawee indebted to drawer—Drawee unable to provide for bill.**—Where a bill is drawn, & the drawee is in fact then indebted to the drawer, but at the time informs the drawer that he is unable to provide for the bill, & it is understood between them that the drawer was to provide for it, if it is not paid when due, the drawer must have notice, or he is not liable.—**STAPLES v. OKINES** (1795), 1 Esp. 331, N. P.

**1901.** ——— **But indorser with effects.**—Notice of non-payment of a bill by the acceptor need not be given to the drawer, if the latter have no effects in the hands of the former, though the indorser have.—**WALWYN v. ST. QUINTIN** (1797), 1 Bos. & P. 652; 120 E. R. 1115.

**Dbtd.** *Cory v. Scott* (1820), 3 B. & Ald. 619. **Reid.** *Kemble v. Mills* (1840), 1 Man. & G. 757; *Carter v. Flower* (1847), 16 M. & W. 743. **Mentd.** *Jones v. Broadhurst* (1850), 9 C. B. 173.

**1902.** ——— **Defence that drawer not damaged by want of notice.**—Nothing shall dispense with the want of notice, to the drawer of the non-payment of a bill of exchange, but the circumstance of there being no effects of the drawer in the drawee's hands; & it is inadmissible evidence that the drawer was not damaged from the want of notice.—**DENNIS v. MORRICE** (1800), 3 Esp. 158, N. P.

**Annotation.**—**Mentd.** *Ramchurn Mullick v. Lachmichand Radakissen* (1851), 9 Moo. P. C. C. 46.

**1903.** ——— **Onus of proof.**—In an action by indorsee against drawer of a bill of exchange:—**Semle**: an averment in the declaration, that the drawee had no effects of the drawer, nor any reasonable expectation of having them, is a good excuse for not giving notice of the dishonour by the acceptor to deft., without a further averment that there was no value or consideration for the acceptance, & that deft. was not damaged by the want of notice of dishonour.

Where the declaration contains all these averments, & deft., by his plea, does not deny that he had no effects, etc., in the hands of the acceptor, plff. is not bound to prove that deft. was not damaged by the omission to give notice of dishonour, but the *onus* of proof that he was lies upon deft.—**FITZGERALD v. WILLIAMS** (1839), 6 Bing. N. C. 68; 8 Scott, 271; 9 L. J. C. P. 41; 133 E. R. 27.

**Annotation.**—**Consd.** *Carter v. Flower* (1847), 16 M. & W. 743.

**1902 i.** ——— **that drawer damaged by want of** ——— **of a foreign bill,** ——— **that the bill was duly** ——— **for acceptance & dis-** ——— **& deft. had not any effects in the hands of the drawee, nor any reasonable ground for expecting that he would have, or that the bill would honoured, & that deft. had** ——— **no damage by reason of** ——— **no notice of the** ——— **murther, on the ground that plff. was bound to give notice to deft. of non-** ——— **or hold the bill till due & it for payment before**

to ——— **HOWATT** ——— **over-** ——— **R. & G. 267.—CAN.** ——— **II.** ——— **on** ——— **by the** ——— **of six hundis, it appeared that three of the hundis were paid, & when three, unpaid, were presented to** ——— **he did not at once insist upon want of notice of dishonour or on** ——— **ment as a ground of dis-** ——— **Held: since deft. did not prove that the drawee had effects of his to meet the hundis on presentment or that he had sustained damage by**

**1904.** ——— **How pleaded.**—Where want of notice of dishonour of a bill, in an action against the drawer, was excused in the declaration, by an allegation that the bill was accepted for the accommodation of the drawer, that he had no assets in the hands of the drawee, & that he sustained no damage by the want of notice:—**Held**: the excuse was sufficient, & it was not necessary to state that deft. had no reasonable expectation of assets in the hands of the drawer at the maturity of the bill.—**THOMAS v. FENTON** (1847), 5 Dow. & L. 28; 2 Saund. & C. 68; 16 L. J. Q. B. 362; 11 Jur. 633.

**Annotation.**—**Mentd.** *Jones v. Broadhurst* (1850), 9 C. B. 173.

**Bill drawn by agent of drawee—Effects deposited with indorser & undertaking to return on exoneration from bill.**—A., the agent in America of B. in England, drew a bill upon him, & indorsed it to C., also residing in America, who indorsed it over. Before the bill became due, A. having reason to believe that B. would fail, lodged property belonging to B. in the hands of C. to answer the bill in case it should be returned, C. undertaking to restore same wherever it should appear that he was exonerated from the bill. Acceptance & payment of the bill were refused, but no notice was given to A.:—**Held**: A. was discharged.—**CHISS v. COTTON** (1802), 3 Bos. & P. 239; 127 E. R. 132.

**Consd.**—**Fold.** *Spooner v. Gardiner* (1824), 1 Ky. & M. **Reid.** *Cory v. Scott* (1820), 3 B. & Ald. 619.

**When bill dishonoured—Effects in drawee's hands when bill drawn—Dishonour by non-acceptance.**—Where the holder of a foreign bill of exchange, after a refusal by the drawee to accept, presented it for payment when due, & was refused payment:—**Held**: the holder was bound to give notice to the drawer of the non-acceptance, without which the original payee, to whom the bill was returned, could not recover against the drawer, & it was no excuse for not giving such notice that the drawer had no effects in the drawer's hands at the time when the bill was refused acceptance or afterwards, if he had some effects, to whatever amount, in the drawee's hands when the bill was drawn.—**ORR v. MAGINNIS**, 7 East, 359; 3 Smith, K. B. 328; 103 E. R. 139.

**Consd.**—**Distd.** *Smith v. Thatcher* (1821), 4 B. & Ald. **Reid.** *Legge v. Thorpe* (1810), 12 East,

**1907.** ——— **Drawer indebted to drawee to larger amount than effects—Effects appropriated in satisfaction of debt—Dishonour by non-acceptance.**—If the drawer of a bill of exchange, when it is presented for acceptance, has effects in the hands of the drawee, though he is indebted to them to a much larger amount, & they, without his

of the want of notice of honour, plff. was entitled to a ——— **SHANMUGAN v. CHINNARANI** (1891), 1 L. L. R. 14 Mad. 479.—**IND.**

When ——— **of a** ——— **to** ——— **recover the amount due** ——— **the** ——— **Act, s. 98 (c), to** ——— **to** ——— **give notice of dishonour, the onus** ——— **on the indorsee to establish that the** ——— **drawer could not** ——— **by the omission.** ——— **r.**

*Sect. 4.—Notice of dishonour: Sub-sect. 8, C.]*

privity, have appropriated the effects in their hands to the satisfaction of the debt, he is entitled to notice of the dishonour of the bill for non-acceptance, as he might expect in the circumstances that it would be accepted & paid.—**BLACKHAN v. DOREN** (1810), 2 Camp. 503, N. P.

*Annotation:—Reid. Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq. 344.

**1908. ——— When bill drawn—Effects in drawee's hands between bill drawn & becoming due.]—**The drawer of a bill of exchange is entitled to due notice of its dishonour, if he had any effects in the hands of the drawee at any time between the drawing of the bill & its becoming due.—**HAMMOND v. DUFRENE** (1811), 3 Camp. 145, N. P.

*Annotation:—Reid. Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq. 344.

**1909. ——— Acceptor becoming indebted to drawer to less amount.]—**The drawer of two bills of exchange before they became due received notice that they were accidentally destroyed, & was called upon to give others in their stead. When the bills were drawn, he had no effects in the hands of the acceptors, but before either was due, the acceptors were indebted to him to an amount less than one of the bills, & became bkpt.:

*Held:* he was entitled to notice of the dishonour of both bills.—**THACKRAY v. BLACKETT** (1812), 3 Camp. 161, N. P.

*Annotations:—Reid. Carter v. Flower* (1847), 16 M. & W. 743; *Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq.

**1910. ——— Reasonable expectation that bill would be honoured—Goods consigned but not come to hand when bill presented for acceptance.]—**Where one draws a bill of exchange with a *bona fide* reasonable expectation of having assets in the hands of the drawee, as by having shipped goods on his own account which were on their way to the drawee, but without the bill of lading or invoice, the drawer is entitled to notice of the dishonour, though in fact the goods had not come to the hands of the drawee at the time when the bill was presented for acceptance, or he had rejected them, & he returned it marked, "no effects."—**RUCKER v. HILLER** (1812), 16 East, 43; 104 E. R. 1005.

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**1911. ———.]—**Where a bill is drawn upon funds, which there is reasonable ground to expect will reach the hands of the drawee before it becomes due, although they do not, the drawer is entitled to notice of its dishonour.—**ROBINS v. GIBSON** (1813), 3 Camp. 334, N. P.;

1 M. & S. 288.

*Mentd.*

*Ad. & Kl. 0; Bonar v. Mitchell* (1850), 5 Exch.

**Bills accepted by drawer for drawee.]—**Where the drawer of a bill of exchange had no effects in the hands of the acceptor from the time of drawing the bill, till it became due, but the acceptor had received from the drawer, prior to the bill on which the action

was brought, acceptances of the drawer, upon which he had raised money, some of which acceptances had been returned dishonoured, & others were outstanding:—*Held:* the drawer was entitled to notice of dishonour of the bill.—**SPOONER v. GARDINER** (1824), Ry. & M. 84, N. P.

**1913.**

**How disproved.]—**It being proved from the state of the drawer, deft.'s, dealings with the drawees, his bankers, that he could have had no reasonable expectation that the bill would be paid by them:—*Held:* he was not entitled to notice of dishonour.—**FRANCE v. LUCY** (1825), Ry. & M. 341, N. P.

*Annotations:—Mentd. Jacob v. Lee* (1837), 2 Mood. & R. 33; *Smith v. Sandeman* (1847), 2 Cox, C. C. 239.

**1914.**

**By person not necessarily acceptor.]—**The drawer of a dishonoured bill is entitled to notice of dishonour, although he knows the bill will not be paid by the acceptor, provided he has reason to expect it will be paid by any other person, or has a remedy over against such person.—**LAFITTE v. SLATTER** (1830), 6 Bing. 623; 4 Moo. & P. 457; 8 L. J. O. S. C. P. 273; 130 E. R. 1421; *sub nom.* **LAFITTE v. SLATTER**, L. & Welsb. 324.

*Annotations:—Reid. Pickin v. Graham* (1833), 2 L. J. Ex. 253; *Carter v. Flower* (1847), 16 M. & W. 743.

**1915.**

**Goods consigned to drawee on credit—Credit not expiring until after bill due.]—**The drawer of a bill of exchange, who has no effects in the hands of the drawee, except that he has supplied him with goods upon credit, which credit does not expire until long after the bill would become due, is not discharged by want of notice of the dishonour.—**CLARIDGE v. DALTON** (1815), 4 M. & S. 226; 105 E. R. 818.

*Annotation:—Reid. Carter v. Flower* (1847), 16 M. & W. 743.

**1916. ———.]—**

A. & Co., resident in America, employed B., resident at Birmingham in England, to purchase & ship goods for them. On account of such purchases, they sent to B. a bill, drawn by C. in America on D. in London, but did not indorse it. B. employed his bankers to present the bill for acceptance. D. refused to accept, but of that the bankers did not give notice until the day of payment, when it was again presented, & dishonoured. Before the bill arrived in England C. became bkpt., & he had not, either when the bill was drawn, or at any time before it became due, any funds in the hands of D., the drawer:—*Held:* the drawer was not entitled to notice, as he had no funds in the hands of the drawee.—**VAN WART v. WOOLLEY** (1824), 3 B. & C. 439; 5 Dow. & Ry. K. B. 374; 3 L. J. O. S. K. B. 51; 107 E. R. 797; *sub-proceedings* (1830), Mood. & M. 520, N. P.

**Accommodation**

**Nos. 1920—**

**Absence of effects in hands of banker**

**—Cheque—Defence that drawer not damaged by want of notice.]—**Want of notice of the dishonour of a cheque on a banker is sufficiently excused *prima facie*, by alleging that the banker had no effects of the drawer, & had received no consideration for payment of the cheque, & that deft. had

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(1841), 1 U. C. R.

**1917. ——— Absence of effects in hands of banker—Cheque.]—**A person called Richmond drew a cheque in favour of E., signing same "Richmond." The

was returned mark to the  
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the words. Upon the  
used by E., he pleaded want of  
of dishonour:—*Held:* the  
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sustained no damages by reason of his having no notice of dishonour, at least upon general demurrer.—**KEMBLE v. MILLS** (1840), 1 Man. & G. 757; 9 Dowl. 446; Drinkwater, 22; 2 Scott, N. R. 121; 133 E. R. 537.

—**Consd.** Carter v. Flower (1847), 16 M. & W. 743. **Ald.** Thomas v. Fenton (1847), 5 Dow. & L. 28. **Consd.** Carew v. Duckworth (1869), L. R. 4 Exch. 313. **Mentd.** Belcher v. Capper (1842), 4 Man. & G. 502.

**1918.** ———— reasonable expectation that cheque would be paid.]—The drawer of a cheque, the state of whose account with the drawee is such that he has no reasonable expectation that the cheque will be paid on presentment, is not entitled to notice of dishonour, before being sued by the holder of the cheque.—**CAREW v. DUCKWORTH** (1869), L. R. 4 Exch. 313; 38 L. J. Ex. 149; 20 L. T. 882; 17 W. R. 927.

**1919.** ———— ]—Pltf. sued deft. in the Lord Mayor's Ct., London, as drawer of two cheques upon the Huddersfield branch of the M. banking co. The cheques were drawn & indorsed by the payee to pltf. in London, the drawer had no effects in the hands of the banking co., & he had long since had notice from the bank that cheques drawn by him would not be paid, unless previously provided for:—**Held**: there being no obligation on pltf. to prove presentment & dishonour, there was no ground for a prohibition.

In the circumstances, a presentment & dishonour of the cheque at Huddersfield was no necessary part of pltf.'s cause of action at all (**ARCHIBALD, J.**).—**WIRTH v. AUSTIN** (1875), L. R. 10 C. P. 689; 32 L. T. 669.

**Annotation**:—**Refd.** *Re Bethell, Bethell v. Bethell* (1887), 34 Ch. D. 561.

**1920.** ———— Accommodation bill—Absence of effects in hands of drawee or acceptor.]—Distinction as to the necessity of notice to the drawer of a dishonoured bill, depending on the fact, whether the acceptor has effects, or, whether it is, if a single transaction, or, if various dealings, the excess, for the accommodation of the drawer or acceptor. In the latter case notice equally necessary without effects. **Qu.**: whether securities, as title deeds, & short bills, are not effects for this purpose.—**Ex p. HEATH** (1813), 2 Ves. & B. 240; 2 Rose, 141; 35 E. R. 310, L. C.

—**Refd.** Carter v. Flower (1847), 11 Jur. 313.

**1921.** ———— Or in hands of accommodated indorsee.]—Where a bill was drawn for the accommodation of an indorsee, & neither such indorsee nor the drawer had any effects in the hands of the acceptor:—**Held**: a subsequent indorsee, in order to entitle him to recover against the

drawer, was bound to give notice of non-payment.—**CORY v. SCOTT** (1820), 3 B. & Ald. 619; 100 E. R. 787.

**Annotations**:—**Fold.** Norton v. Pickering (1828), 8 B. & C. 610. **Consd.** Burgh v. Leane (1839), 5 M. & W. 418. **Fold.** Turner v. Samson (1876), 46 L. J. Q. B. 167. **Refd.** Carter v. Flower (1847), 16 M. & W. 743; Maltass v. Siddle (1859), N. S. 494; Woods v. Dean (1862), 3 B. & S. 101. (C. D.)

**1922.** ———— ]—A bill was drawn by A. upon B. for the accommodation of C., who indorsed it for value to D. Neither A. nor C. had any effects in the hands of B. The bill was dishonoured by B.:—**Held**: the drawer was entitled to notice.—**NORTON v. PICKERING** (1828), 8 B. & C. 610; Dan. & Ll. 210; 3 Man. & Ry. K. B. 23; 7 L. J. O. S. K. B. 85; 108 E. R. 1169.

—**Refd.** Carter v. Flower (1847), 16 M. & W. 743.

**1923.** ———— ]—Want of effects in the hands of the acceptor excuses the indorsee of an accommodation bill of exchange from giving notice of dishonour to the drawer.—**TERRY v. PARKER** (1837), 6 Ad. & El. 502; 1 Nev. & P. K. B. Will. Woll. & Dav. 303; 6 L. J. K. B. 219; E. R. 192.

**Refd.** Wirth v. Austin (1875), L. R. 10 C. P. **Mentd.** Sands v. Clarke (1849), 8 C. D. 751; *Re* 34 Ch. D. 561.

**1924.** ———— Bill payable at drawer's own house.]—Where the drawer of a bill of made it payable at his own house:—**Held**: jury might fairly infer that it was an accommodation bill, which made it unnecessary to give him notice of non-payment by the acceptor.—**BAILEY** (1829), 9 B. & C. 44; 4 Man. & Ry. K. 4; 100 E. R. 17; *sub nom.* SLARK v. 7 L. J. O. K. B. 138.

**Refd.**

*n.*

7 C. B.

**1925.** ———— Payment by drawer without notice of dishonour—Money paid to acceptor's use.]—A. became drawer & indorser of a bill of exchange for B.'s accommodation. The bill was dishonoured, but no notice of the dishonour was given to A. A. paid £25 to the holder in part satisfaction of the bill, which he allowed the holder to retain. There was no express request by B. that A. should pay the bill. A. afterwards sued B. for the £25 in an action for money paid to his use:—**Held**: as A. was discharged by not receiving notice of dishonour, there was no implied request.—**SLEIGH v. SLEIGH** (1850), 5 Exch. 514; 19 L. J. Ex. 345; 15 L. T. O. S. 475; 155 E. R.

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## 290 BILLS OF EXCHANGE, PROMISSORY NOTES AND

4.—*Notice of dishonour: Sub-sect. 8, C. & D.; sub-sect. 9.]*

Accommodation bills generally, see Part X., Sect. 3, & Sect. 8, sub-sect. 1, ante.

*D. As regards Indorser.*

See 1882 Act, s. 50 (2) (d).

**1926. Drawee fictitious person.]**—One who without consideration, but without fraud, indorses a bill, in which both the holder & acceptor are fictitious persons, is entitled to notice of the dishonour of the bill.—*LEACH v. HEWITT* (1813), 4 Taunt. 731; 128 E. R. 518.

*Annotations:—Mentd.* Carter v. Flower (1847), 16 M. & W. 743; Sands v. Clarke (1849), 8 C. B. 751; Maltass v. Siddle (1859), 6 C. B. N. S. 494.

**1927. No effects of drawer in hands of acceptor.]**—It is no excuse for not giving notice to the indorser of a bill of exchange, that the acceptor had no — *WILKES v. JACKS* (1793), Peake, N. P.

*Refd.* (1847), 16 M. & W. 743.

— *SISSON v. THOMLINSON* (1805), 1 Selw. N. P., 13th ed., 290.

*Annotation:—Consd.* Brown v. Maffey (1812), 15 East, 216.

**1929. — Not known to Indorser.]**—Where a bill was drawn, accepted, & indorsed by several indorsers, for the accommodation of the last indorser, & the acceptor had no effects of the drawer in his hands, but that fact was not known to deft., one of the prior indorsers:—*Held*: deft. was entitled to notice of the dishonour, before the holder could maintain an action against him, in order to enable him, even if he had no remedy upon the bill, to call immediately upon the last indorser, to whom, in fact, he had lent the security of his indorsement, without value received, & who had, in fact, received the money upon that security.—*BROWN v. MAFFEY* (1812), 15 East, 216; 104 E. R. 820.

*Annotations:—Consd.* Rucker v. Hiller (1812), 16 East, 43; Cory v. Scott (1820), 3 B. & Ald. 619. *Refd.* Free v. Hawkins (1817), Holt, N. P. 550; Carter v. Flower (1847), 16 M. & W. 743. *Mentd.* Sands v. Clarke (1849), 8 C. B. 751; Maltass v. Siddle (1859), 6 C. B. N. S. 494.

**1930. No effects of indorser in hands of acceptor, drawer, or prior indorser.]**—To a statement of defence, in an action against an indorser of a bill of exchange, setting up the absence of notice of dishonour, pltf. replied that neither at the time when the bill was drawn, nor afterwards, nor when it became due & on presentment thereof, had the acceptor, or the drawer, or any indorser prior to deft., any effects of deft. in his hands, & the bill was drawn & accepted & indorsed by deft. the prior indorsers for the purpose of raising

money for deft., the drawer, the acceptor, & the prior indorsers jointly, & deft. was in no way damnified, even if there was no notice of dishonour:—*Held*: a bad reply.—*FOSTER v. PARKER* (1876), 2 C. P. D. 18; 46 L. J. Q. B. 77; 25 W. R. 321.

**1931. Indorser having funds to pay.]**—Where a person becomes indorser of bills or notes given by an insolvent, in order to secure to his creditors their dividends under a composition, & he receives part of insolvent's effects, in order to secure himself, he cannot take advantage of want of notice of non-payment by insolvent.—*CORNEY v. DA COSTA* (1795), 1 Esp. 302, N. P.

*Annotations:—Consd.* Brown v. Maffey (1812), 15 East, 216. *Refd.* Carter v. Flower (1847), 16 M. & W. 743; Maltass v. Siddle (1859), 33 L. T. O. S. 124.

**1932. Note not payable to order.]**—Pltf. received from deft., in payment for goods, a promissory note indorsed by deft., but not made payable to order. The note having been dishonoured by the maker:—*Held*: pltf. was entitled to recover the price of the goods, notwithstanding he had omitted to give deft. due notice of the dishonour of the promissory note.—*PLIMLEY v. WESTLEY* (1835), 2 Bing. N. C. 249; 1 Hodg. 324; 2 Scott, 423; 5 L. J. C. P. 51; 132 E. R. 98.

*Annotation:—Consd.* Gwinnell v. Herbert (1836), 5 Ad. & El. 430.

**1933. Accommodation bill or note.]**—A. drew a promissory note payable to B. or order, which B. indorsed, having given no value for it & knowing that A. was insolvent. In an action by the indorsee against B.:—*Held*: it was not necessary to prove that notice was given to B. of A.'s refusal to pay it.—*DE BERDT v. ATKINSON* (1794), 2 Hy. Bl. 336; 126 E. R. 582.

*Annotations:—Dtd.* Leach v. Hewitt (1813), 4 Taunt. 731. *Distd.* Free v. Hawkins (1817), 1 Moore, C. P. 535. *Consd.* Terry v. Parker (1837), 6 Ad. & El. 503; Sands v. Clarke (1849), 8 C. B. 751. *Refd.* Maltass v. Siddle (1859), 6 C. B. N. S. 494.

**1934. —.]**—*Assumpsit* on a promissory note by indorsee against indorser. The declaration alleged that the note had been indorsed to pltf. by the payee, & averred "that neither at the time when the note was made, nor afterwards, & before it became due, nor when it became due, & on presentment for payment, had the maker, or the payee, any effects of deft. in his hands, nor was there any consideration or value for the making of the note, of the payment thereof, or its indorsement by the payee to deft., & that deft. had not sustained any damage by reason of his not having had notice of the non-payment of the note:—*Held*: as against an indorser the declaration was bad, for not stating a sufficient excuse of want of notice of dishonour, for it was consistent with its

### PART XII. SECT. 4, SUB-SECT. 3.

—D.

**1927 I. No effects of drawer in hands**  
the indorser of a bill of  
all cases entitled to  
whether the drawer have or  
not effects in his ha  
2 R.

**1927 II. —.]**—C. drew on R.  
who had no effects, & did  
& the bill was protested  
& non-payment. H.

Notices of non-a  
ment were duly given  
only to the in.  
: R.

by the want  
& the facts of there having been no  
effects in the hands of the drawee, &  
of R. having indorsed for accommoda-  
tion, made no difference.—*GORE*

1928 I

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from H

—CAN.

1928 II.

—CAN.

**1928 III. —.]**—To an action  
the maker & indorser of a note, deft.  
pleaded that the note was indorsed by  
the payee during its currency to R.,  
who had notice of its being an accom-  
modation note, & that deft. was only  
security for the payee, that R. held it  
till at & after maturity, but did not  
notify the payee as indorser, who  
never received notice of dishonour,

the indorsed to pltf. after  
with notice that it was an  
note:—*Held*: the plea  
bad, for the want of notice could  
not prejudice deft.—*GRANT v. STANLEY* (1871), 21 Q.



allegations, that the note might have been indorsed by deft. for the accommodation of one of the parties to it, in which case deft. would be entitled to notice of dishonour.—**CARTER v. FLOWER** (1847), 16 M. & W. 743; 4 Dow. & L. 529; 16 L. J. Ex. 199; 9 L. T. O. S. 128; 11 Jur. 813; 153 E. R. 1390.

**Maltass v. Siddle** (1859), 5 Jur. N. S. 1169. **Reid. Robson v. Oliver** (1847), 11 Jur. 1056; **Allen v. Edmundson** (1848), 2 Exch. 719; **Mulloch v. Radakisson** (1854), 23 L. T. O. S. 25; **Turner v. Samson** (1876), 3 Q. B. D. 23. **Mentd. Foster v. Parker** (1876), 46 L. J. Q. B. 77.

1935. —Where an accommodation bill drawn by certain members of a co. as agents of such co. on the co., & accepted by the same members as such agents, & was indorsed to another member of the co., without value, who at the request of the persons finding the money again indorsed it:—**Held**: such indorser was entitled to notice of dishonour from the subsequent indorsee.—**MALTASS v. SIDDLE** (1859), 6 C. B. N. S. 494; 28 L. J. C. P. 257; 33 L. T. O. S. 124; 5 Jur. N. S. 1169; 7 W. R. 449; 141 E. R. 549.

1936. —No remedy over.]—An indorser of an accommodation bill has a right to notice of dishonour, unless it be shown that he would, if he paid the bill, have no remedy over against any other party to the bill.—**TURNER v. SAMSON** (1876), 2 Q. B. D. 23; 46 L. J. Q. B. 167; 35 L. T. 537; 25 W. R. 240, C. A.

Accommodation bills generally, Part X., Sect. 3, & Sect. 8, sub-sect. 1.

#### SUB-SECT. 9.—EFFECT OF OMISSION TO GIVE NOTICE.

See 1882 Act, s. 48.

1937. On liability of—Indorser.]—If the indorsee of an inland bill, not due, present it for acceptance, which is refused, & delay giving notice to his indorser, the indorser will be discharged.—**GOODALL v. DOLLEY** (1787), 1 Term Rep. 712; 99 E. R. 1336.

**Consd. Dunn v. O'Keefe** (1816), M. & W. 1055; **Orr v. Maginnis** (1806), 7 East, 7; **r. Graham** (1833), 1 Cr. & M.

Discharge generally, see Part XIV.

1938. —Paying bill with knowledge of want of notice.]—A., with a view to accommodate B., lent him a bill drawn by himself upon & accepted by C., who had effects of his in his hands. B. indorsed it to D., who indorsed it over. The day before the bill became due B. paid the amount to A., who, on hearing that C. had failed, gave B. a cheque for the amount of the bill, & sent him with it to D., to enable him to pay the bill when due. Four days after that time A., learning that

payment had not been demanded, desired D. not to pay the bill, as no notice of non-payment had been given by the holder, & offered to indemnify him, but notwithstanding that D. afterwards paid the bill:—**Held**: D. paid the bill in his own wrong & A. was entitled to recover back the money paid into the hands of D. by B., in an action for money had & received.—**WHITFIELD v. SAVAGE** (1800), 2 Bos. & P. 277; 126 E. R. 1279.

**Hill v. Hoap** (1823), Dow. & Ry. N. P.

**Drawer of bill in hands of bona fide indorsee for value without notice.]**—The drawer of a bill of exchange is not discharged by the want of notice of non-acceptance, where the bill has passed into the hands of a bona fide indorsee for value, who had no knowledge of the dishonour.—**DUNN v. O'KEEFE** (1816), 5 M. & S. 282; 105 E. R. 1055; *affg. sub nom. O'KEEFE v. DUNN* (1815), 6 Taunt. 805.

**r. Walker** (1842), 9 M. & W.

506.

1940. —Principal—To indemnify agent drawing bill as such.]—S. & Co., the owners of a ship, of which plff. was captain, despatched the latter to Miramichi, with instructions to purchase a cargo of timber, & draw upon them for the amount. Plff. proceeded to Miramichi, & there purchased some timber from L., for £154 11s. 11d., & drew a bill upon S. & Co. for the amount, at 60 days' sight, in favour of the seller or his order. The bill was dated Sept. 4, 1826, & on Nov. 21, it was duly presented for acceptance & protested for non-acceptance. Plff. was in Liverpool, with the ship under his command, from Oct., 1826, until Apr., 1827. It was not proved that plff. received any notice of the dishonour of the bill, either from the then holder or from defts., who had got the cargo. In 1832, plff. was arrested upon the bill, at Miramichi, & paid it, in order to release himself from the arrest. In a special action of *assumpsit*, brought by plff. against defts. for not paying the bill, for not accepting it, & for not indemnifying plff. from all loss, etc., sustained by him from drawn the bill:—**Held**: in the circumstances, defts. could not insist on the want of proof of notice to plff. of the dishonour of the bill, as a defence to the action, & a promise to indemnify was the promise which the law would imply.

Upon the special grounds that plff. drew the bill because he was agent to defts., that it was drawn not for his own purposes, but to pay for goods he had bought for them, that it does not appear they ever apprised him they had dishonoured the bill, or gave him any instructions how to act if called upon for payment, the want of notice to plff. of the dishonour of the bill, from the holder of the bill, furnishes no ground of defence (**BAYLEY, J.**).—**HUNTLEY v. HENDERSON** (1833), 1 Cr. & M. 467; 3 Tyr. 469; 2 L. J. Ex. 204; 149 E. R. 483.

(1892), 26 N. S. R.

XII. 4.  
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will be taken to have acquiesced  
in payment of the debt &

(1899), 15 A. R. 129.—**CAN.**  
to plffs. a draft on R. in part  
of his indebtedness to them.  
draft was not paid. & was not  
to defts., & notice  
non-payment until  
of R. from the country:  
fa'. omission to notify d  
non-payment of the d  
as a discharge.—**HART**

**CAN.**  
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person, in draft on a thi  
to give deft. notice of  
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was guilty of such laches as to  
the debt his own, & preclude him

*Sect. 4.—Notice of dishonour: Sub-sect. 9. Sect. 5*

**1941. On right to sue on original consideration.]**—Where a bill of exchange was given in payment for goods sold, which upon presentment to the drawee was refused acceptance:—*Held*: the holder having declared against the drawer on the bill & joined counts for goods sold, might treat such bill as a nullity & recover on his demand on the latter counts, & it was sufficient to prove a presentment to the drawee for acceptance, without showing that the bill was protested for non-acceptance, or that the drawer had notice of dishonour.—*HICKLING v. HARDEY* (1817), 7 Taunt. 312; 1 Moore, C. P. 61; 129 E. R. 125.

**1942. ———.]**—Where goods were paid for by country bank notes in the afternoon of a day, in the morning of which the bankers had stopped payment, without the knowledge of the vendor & vendee, & the former, at the end of a week, offered to return the notes to the latter, demanding payment of them:—*Held*: the vendor should have promptly presented the notes to the insolvent bankers, & given notice of non-payment to the vendee according to the law merchant, & by his neglect to do so he had made the notes his own.—*CAMIDGE v. ALLENBY* (1827), 6 B. & C. 373; 9 Dow. & Ry. K. B. 301; 5 L. J. O. S. K. B. 95; E. R. 189.

*Consid.* *Turner v. Stones* (1843), 1 Dow. & L. 122. *Distd.* *Robson v. Oliver* (1847), 10 Q. B. 704; *Timmins v. Gibbins* (1852), 18 Q. B. 722. *Consid.* *Lichfield Union Grdu. v. Greene* (1857), 1 H. & N. 884. *Distd.* *Leeds Bank v. Walker* (1883), 11 Q. B. D. 84. *Reid.* *Rogers v. Langford* (1833), 1 Cr. & M. 637; *Smith v. Mercer* (1867), L. R. 3 Exch. 51.

*See, generally, BANKERS & BANKING, Vol. III., pp. 198-200*

**1943. ———. Non-negotiable instrument.]**—Deft. indorsed & delivered to plffs. in payment for goods a promissory note made by H. payable to R. & W., without the words "or order," & indorsed by R. & W. to K., & by K. to deft. The note being dishonoured by the maker:—*Held*: plffs. were entitled to sue deft. for the original consideration,

*Boom Co.* (1877), B. 7. *CAN.*  
1. *On right of consideration.]* Plff. to the amount of deft.'s son to the deft.'s son in favour of deft. but plffs., the note, not received due notice of honour. Plffs. having sued to £13 16s. 11d., the price of the sold to deft.:—*Held*: the laches of plffs. in not giving deft. due notice of dishonour, operated so as to make the note equivalent to payment as between plffs. & deft., & plffs. were not entitled to fall back &

S. W. L.

the bill of exchange may it from the

—Where promissory third persons were transferred deft. without indorsement as col-

lateral security for a debt due by to plff., who sued deft. for the amount of the debt, & deft. raised the objection that plff. had not notified deft. of the non-payment of the notes:—*Held*: if deft. had been injured by such or want of notice, & to the to which he had been injured, he should be exonerated from pay but not otherwise, & the trial had pushed the law too far a. plff. in holding that having found the laches & want of notice as a matter of fact, it was a conclusion of law that detriment had followed to deft.—*McCONELL* (1889), 19 O. R.

**1941 iv. ———.]**—Where a creditor, maturity of a loan, accepts a promissory note of another, indorsed by for the amount of the loan, if no notice of dishonour is given to the debtor as indorser, the creditor will not be prevented from suing debtor upon the original debt, unless it is shown that there was money at the place of payment ready to pay such note at its

of the giving notice of dishonour of a the drawer was discharged, not merely in respect of it, but also from the

been given, the **PLIMLEY v. WESTLEY** 1 Hodg. 324; 2 E. R. 98.

*Annotation:—Distd.*

*Herbert* (1836), 5 Ad. &

had

P. 51;

, ante.

**1945. ———.]**—If a creditor takes a bill of exchange from his debtor as collateral security for the payment of his debt, & retains it until it becomes due, & if he omits to give notice of dishonour in the same way as if he were absolute owner of the bill, & the bill becomes worthless, he cannot afterwards sue his debtor, either on the bill, or on the original consideration.—**PEACOCK v. PURSELL** (1863), 14 C. B. N. S. 728; 2 New Rep. 282; 32 L. J. C. P. 266; 8 L. T. 636 10 Jur. N. S. 178; 11 W. R. 834; 143 E. R. 630.

*Annotations:—Reid.* *Yglesias v. River Plate Bank* (1877), 3 C. P. D. 60; *Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639.

## **SECT. 5.—NOTING AND PROTEST.**

### **-SECT. 1.—NECESSITY FOR PROTEST.**

#### *A. Foreign Bills of Exchange.*

*See* 1882 Act, ss. 51 (2) (9), 89 (4).

**1946. General rule.]**—Plff. declared that deft. drew a bill of exchange, according to the custom of merchants, on W. merchant at Rotterdam, payable to H. within two usances & a half, & alleged them to be at Rotterdam two months & a half, & alleged the custom, that if such a bill were protested for non-payment the drawer was liable, that the bill was assigned over, & tendered to W. & that he did not pay. Plff. protested, & brought his action against deft.:—*Held*: the law of merchants was, that if he who had such a bill lapsed his time, & did not protest or make his request, if any accident happened by that neglect in prejudice to

liability for which it was given.—**CALGARY BREWING & MALTING Co., LTD. v. ROGERS**, [1918] 1 W. W. R. S. C. R. 165.—**CAN.**

**1941 vi. ———.]**—In a suit based on the consideration independently of a hundi, it is not necessary to prove of dishonour.—**KRISHNAJI NARAPARKHI v. RAJMAL MANICK MARWADI** (1899), 1 L. R. 24 Bom. 360.—**IND.**

**d. Through fraud of agent to give** —On the maturity of a note handed it to D., their solr., for st. D. did not protest or notify defts., maker & indorser respectively, of its dishonour, but delivered it to them, adding that he had paid it. About three months after its maturity D. absconded, & after that defts. were the first time notified of the non- of the note. In an action

on that by the the above facts, of the plffs. they from obtaining indemnity from D., & that if compelled to pay the note, they would be raided out of the amount:—*Held*: & defts. or Com.

**GREEN**

45 U. C. R.



the drawer, he lost his remedy against

317; Holt, K. B.

Show.

1947.  
post.

v. STAVELY, No.

1948. — Protest for non-acceptance.]—In an action against the drawer of a foreign bill of exchange a protest for non-acceptance must be proved.—GALE v. WALSH (1793), 5 Term Rep. 239; 101 E. R. 134.

—Consd. 1  
Reid. Chaters v. Bell  
(1850), 5 Exch. 415.

v. Thorpe (1810), 12 East, 171.  
, 4 Esp. 48; Bonar v. Mitchell

1949. — Noting for non-acceptance not sufficient.—Though subsequent protest for non-payment.]—Where a foreign bill of exchange payable 40 days after sight is refused acceptance, & an action is brought in order to charge the drawer, proof of the noting of the bill alone for non-acceptance is not sufficient, without proving that it was also protested for non-acceptance, though there be a subsequent protest for non-payment.—ROGERS v. STEPHENS (1788), 2 Term Rep. 713; 100 E. R. 384.

—Reid. Orr v. Maglunis (1806), 7 East, 359;  
v. Thorpe (1810), 12 East, 171; Bonar v. Mitchell  
(1850), 5 Exch. 415. Mentd. Patterson v. Becher (1821),  
6 Moore, C. P. 319; Armand v. Castrique (1844), 13 M. & W.  
413; Campbell v. Webster (1845), 2 C. R.

1950. — Semble: proof of a protest for non-acceptance of a foreign bill of exchange is necessary to enable the payee to recover against the drawer, & the want of it is not supplied by proof of a noting for non-acceptance & a subsequent protest for non-payment.—Orr v. MAGINNIS (1806), 7 East, 359; 3 Smith, K. B. 328; 103 E. R. 139.

Annotations:—Mentd. Legge v. Thorpe (1810), 12 East, 171;  
Smith v. Thatcher (1821), 4 B. & Ald.

On failure to accept generally as drawn.]—The holder of a bill of exchange may insist upon the drawee accepting it generally, in the very words in which it is drawn, or may protest it for non-acceptance.—BOEHM v. GARCIAS (1807), 1 Camp. 425, n.

—Consd. Rowe v. Young (1820), 2 Bll.

1952. — Protest for non-payment.—To charge acceptor for honour.]—The acceptors of a foreign bill of exchange, who, after presentment to the drawees for acceptance, & refusal by them to accept, & protest for non-acceptance, accept same for the honour of the first indorsers, are not liable on such acceptance, unless there has been a presentment of the bill to the drawees for payment & a protest for non-payment.—HOARE v. CAZENOVE (1812), 16 East, 391; 104 E. R. 1137.

—Consd. Williams v. Germaine (1827), 7 B. & C.  
Reid. Re Wyld (1850), 2 L. T.

Second protest on subsequent  
ment of dishonoured bill.]—A second protest on a  
of a dishonoured bill is

#### PART XII. SECT. 5, SUB-SECT. 1.

1. Under Bills of Exchange Procla-  
mation, s. 49 (1).]—Failure to protest  
in terms of the above sub-sect.

of failure to protest a  
for non-payment does not  
the

above

to pay note:— amount of he  
there no p. note, not-  
that it

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wife to waive protest in order to avoid  
costs.—BARNARD v. MCCORMILL (1844),  
14 L. C. R. 400.—Cf

W. L. D.

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1893, s. 49: his wife, had indorsed for her a pro-

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BARCI & SALKELD (1814), 1 Stark. 7, N. P.

— Bill paid supra protest for honour.  
Part XV.,

1954. When dispensed with—No effects of drawer in hands of drawee—Or reasonable expectation that bill would be honoured.]—A protest for non-acceptance of a foreign bill of exchange is not necessary to be proved in an action by the indorsee against the drawer, if it appear that the drawer had no effects, nor probability of any effects in the hands of the drawee at the time, & it do not appear that there was any fluctuating balance of assets between them unascertained at the time which might then have afforded probable ground of belief to the drawer that his bill would be honoured.—LEGGE v. THORPE (1810), 12 East, 171; 104 E. R. 68.

—Reid. Patterson v. Becher (1821), 6 Moore, C. P. 319; Carter v. Flower (1847), 16 M. & W. 743.  
Mentd. Campbell v. Webster (1845), 6 L. T. O. S.

1955. — Waiver—Letter offering terms for payment.]—In an action by payee against drawer of a bill of exchange the declaration stated that the latter drew it at "St. Helena, to wit at Westminster," & did not aver a protest either for non-acceptance or non-payment. On the production of the bill, it was dated at St. Helena, & not stamped. On an objection that plff. had given no evidence of a protest for non-acceptance or non-payment:—Held: as there was evidence of a subsequent promise by deft. to pay the amount of the bill coupled with a letter written by his attorney, offering terms for payment, it was a waiver of those objections, although such attorney swore that such offer was made without prejudice.—PATTERSON v. BECHER (1821), 6 Moore, C. P. 319.

—Apld. Campbell v. Webster (1845), 1 New et. Cas. 318.

1. Pleading—Omission of averment of protest.]—In declaring against the indorser of a foreign bill of exchange, the omission of the averment of protest is only matter of form, & cannot be advantage of under a general demurrer.

There is no doubt that this is a foreign bill, that a protest & notice of the protest are ne (LORD MANSFIELD).—SALOMONS v. STAVELY 3 Doug. K. B. 298; 99 E. R.

#### B. Inland Bills of E.

See 1882 Act, s. 51 (1).

1957. Under 9 & 10 Will. 3, c. 17.]  
declaring upon inland bills against the drawer, protest need not be set forth.—BOROUGH v. PERKINS (1703), 1 Salk. 131; 91 E. R. 123; sub nom. BROUGH v. PERKINS, 6 Mod. Rep. 80; 2 l. Raym. 992; 3 Salk. 69.

Tutton v. Darke, Nixon v.

## 294 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 5.—Noting and protest: Sub-sect. 1, B. & C.; 1, 2, 3 & 4.]*

**1958.** ———.]—There is no custom for the protest of inland bills of exchange.—**TASSELL & LEE v. LEWIS** (1695), 1 Ld. Raym. 743; 91 E. R. 1397.

*Annotations:—Mentd.* Brown v. Harraden (1791), 4 Term Rep. 148; Walwyn v. St. Quintin (1797), 1 Bos. & P. 652; Morris v. Richards (1881), 45 L. T. 210.

**1959.** ———. **To charge drawer with interest.]—**In an action against the drawer of an inland bill after an acceptance:—*Held*: for want of a protest according to the above Act the drawer could not be charged with interest.—**HARRIS v. BENSON** (1732), 2 Stra. 910; 93 E. R. 935.

*affon:—Dctd.* Windle v. Andrews (1819), 2 B. & Ald. 696.

**1960.** ———.]—It is not necessary to set out the protest of an inland bill of exchange, unless the party goes for interest & costs; but if it is set out, it must be proved.—**BOULAGER v. TALLEYRAND** (1797), 2 Esp. 550, N. P.

**1961.** ———.]—To entitle the indorsee of an inland bill of exchange to recover interest from the drawer, it is not necessary to protest same for non-payment.—**WINDLE v. ANDREWS** (1819), 2 B. & Ald. 696; 106 E. R. 519.

**1962.** ———. **Bill payable after sight.]—**The provisions of the above Act, respecting protests of inland bills:—*Held*: not to apply to such bills as were made payable after sight.—**LEFTLEY v. MILLIS** (1701), 4 Term Rep. 170; 100 E. R. 955.

*Annotations:—Mentd.* Haynes v. Birks (1804), 3 Bos. & P. 599; Triggs v. Newham (1825), 10 Moore, C. P. 249; Kennedy v. Thomas, [1894] 2 Q. B. 759.

**1963.** **Note made in Scotland.]—**In an action by the manager of a joint stock banking co. upon a note indorsed by deft. to the co., the declaration stated that L. made his promissory note at L. in Scotland, to the order of defts., & delivered the note to them, & that they indorsed it to the co., that the note was not paid, although duly presented for payment, & that it was protested for payment, whereof deft. had notice. Plea, that defts. had

no notice of the note being so protested, *modo et forma*:—*Held*: the plea was bad *non obstante veredicto*, on the ground that no protest of an inland note, which it was to be taken to be, was necessary.—**BONAR v. MITCHELL** (1850), 5 Exch. 415; 19 L. J. Ex. 302; 155 E. R. 181.

### C. Protest for Better Security.

*See* 1882 Act, s. 51 (5).

**1964.** **Drawee absconding.]—**ANON., No. 1966, *post*.

### SUB-SECT. 2.—TIME OF PROTEST.

*See* 1882 Act, ss. 51 (4), as amended by 1917 Act, s. 1, & 93.

**1965.** **Within reasonable time.]—**A bill of exchange must be protested within a reasonable time.—**BUTLER v. PLAY** (1669), 1 Mod. Rep. 27; 2 Keb. 584; 86 E. R. 706.

*Annotation:—Mentd.* Hill v. Heap (1823), Dow. & Ry. N. P. 57.

**1966.** **Before date of payment—Drawee absconding.]—**The custom of merchants is, that if B., upon whom a bill of exchange is drawn, absconds before the day of payment, the man to whom it is payable may protest it, to have better security for the payment, & to give notice to the drawer of the absconding of B., & after time of payment is incurred, then it ought to be protested for non-payment the same day of payment or after it. But no protest for non-payment can be before the day that it is payable.—ANON. (1695), 1 Ld. Raym. 743; 91 E. R. 1397, N. P.

*Annotation:—Reid.* Campbell v. French (1795), 6 Term Rep. 200.

**1967.** **At any time after noting.]—**GOOSTREY v. (1751), Bull. N. P. 271a, N. P.

*Annotation:—Reid.* Goodman v. Harvey (1836), 4 Ad. & El. 870.

Where the indorser, on the day following that on which a promissory note became due, agreed in writing that he would be responsible for the amount of the note, with interest:—*Held*: a

*v. SEGUIN* R. 12 S. C. 63.  
CAN.

of a premature protest

to pay, his  
is revived.—**CITY BANK v. HUNTER**  
**MATLAND** (1847), 3 R. de L. 171.

on maturity  
of an accommodation note, the indorser,  
to save noting expenses, in writing on  
of the note accepted notice of  
it & promised to pay  
the words

by the indorser a waiver  
of protest.—**JON**  
1 E. D. C. 28.—S. AF.

to  
agent of holder—*Evidence.*—The in-  
dorser of a note was released from  
liability by the fact that the note was  
not protested, but afterwards went to  
the lawyer of the holder & promised  
to pay it, & again subsequently sent a  
letter to the same effect, which was  
destroyed:—*Held*: his promise to the

lawyer was as binding as if made to  
the holder, & could be proved by parol  
evidence.—**JOHNSON v. GEOFFRION**  
(1863), 7 L. C. J. 125; 13 L. C.  
181.—CAN.

time.]—When a promissory note  
due deft., the indorser, went to plt.,  
offered a renewal note, & asked for  
time in which to pay:—*Held*: a  
waiver of protest.—**SMITH v. LANG**,  
32 C. L. T. Occ. N. 418.—CAN.

**HART**  
CAN.

M.  
Son was a firm of insurance brokers.  
The son forged the name of the father  
to a document which he gave to plt.,  
a bank, by which it was agreed that  
the persons composing the firm should  
be jointly liable to plt. for all transac-  
tions entered into with the bank in  
the name of the firm by any

firm. The son was confined to  
the house a few days before he ab-  
sconded, & two bills indorsed by him  
in the firm name were not protested.  
When the forgery was brought to the  
notice of the father by the bank's  
he was induced to indorse a  
of protest on them, which the

bank claimed had the effect of estopping  
him from disputing liability thereon:  
—*Held*: the utmost the bank was  
induced to abstain from by reason of  
the waiver was the sending of a notice  
of protest & dishonour to the father,  
& in the circumstances of the case  
that did not prejudice plt.—**ROYAL**  
**BANK v. MAUGHAN** (1908), 12 O. W. R.  
—CAN.

### PART XII. SECT. 5, SUB-SECT. 2.

1. **Before date of payment.]—**If  
the protest for non-payment of a pro-  
missory note be premature, the  
indorser is discharged.—**CITY BANK v.**  
**HUNTER & MATLAND** (1847), 3 R. de L.  
171.—CAN.

a. **After in day of A**  
**in** payable  
at Montreal, is an \_\_\_\_\_ note, & may  
be properly protested the day after  
the third day of grace.—**BRADSTRY**  
**v. DOOLE** (1841), 1  
CAN.

**1967.1.** **At any time after noting.]—**  
B. sued as representing her husband,  
on three bills, of which he was drawer  
& indorser, & which fell due in 1811.  
In evidence of the protest of the bills,  
an instrument, dated in 1811, including  
several others, was produced. The



.]—If a foreign bill of exchange is regularly presented & noted, the protest may be drawn up in form at any time afterwards.—*CHATERS v. BELL* (1801), 4 Esp. 48, N. P.

1969. Before payment for honour.])—A party to a bill of exchange is not liable for money paid to his use by a person who takes up the bill for his honour, unless formal protest of payment to his honour be made before payment of the bill.—*VANDEWALL v. TYRRELL* (1827), Mood. & M. 87, N. P.

—*Expld.* *Geralopulo v. Wieler* (1851), 10 C. B. 690.

1970. —.])—Where a foreign bill is paid *supra* protest for the honour of an indorser, the bill must be protested for non-payment, before the payment for honour is made, but the formal instrument of protest may be drawn up, or extended, at any time afterwards, even after the commencement of an action by the person so paying, against the indorser for whose honour the payment was made.—*GERALOPULO v. WIELER* (1851), 10 C. B. 690; 20 L. J. C. P. 105; 17 L. T. O. S. 17; 15 Jur. 316; 138 E. R. 272.

et. assolized, & B. reclaimed, & produced separate instruments, recently framed, applicable to each of the bills:—*Held*: an instrument of protest might be extended at any distance of time, provided it was done from authentic evidence.—*BARBOUR v. NEWALL* (1823), 2 Sh. (Ct. of Sess.) 328.—SCOT.

1967 ii. —.])—A notary having marked a bill as noted at the time when it was dishonoured, may extend the instrument of protest at any time (1827), 6 Sh. (Ct. of Sess.) 150; 3 Fac. Coll. 142.—SCOT.

1967 iii. —.])—Where a bill of exchange is transferred by indorsation after it is dishonoured & noted for non-payment, the indorsee may afterwards have the instrument of protest extended in his own name, although the bill was noted in the name & at the instance of a former holder.—*ALLAN v. GALLI* (1829), 4 Fac. Coll. 276.—SCOT.

1967 iv. —.])—Where a bill bore to be noted on Sept. 24 & the protest was dated the 25th:—

to the noting, was invalid, & as a foundation of diligence.—*SON v. WRIGHT* (1855), 12 R. (Ct. of Sess.) 942; 22 Sc. L. R. 629.—SCOT.

#### PART XII. SECT. 5, SUB-SECT. 3.

b. At public office where maker red—Or at maker's dwelling.—A domiciled Scotsman, one of the Bill-Chamber clerks, granted a

to the manager of a bank in London, but without specifying the place of payment. The latter indorsed it to a third party, an Englishman, who, after a protest taken at the public Bill-Chamber office, & bearing to be made "at his,"

Edinburgh  
Scmble  
the protest was regular & formal, taken at the public office of the not personally, or at use of debtor.—

c. *BURIVEN* (1843), 6 Duml. (Ct. of Sess.) 17; 16 Sc. Jur.

e. When notary not 1882 Act, s. 94.])—The above only applicable at the place where a bill is dishonoured, & the

bill has been first duly & dishonoured in the only place of honour in the sense of the 25 R. (Ct. of Sess.) 524; 35 Sc. L. R. 443; 5 Sc. L. T. 310.—SCOT.

#### PART XII. SECT. 5, SUB-SECT. 4.

d. *Requisites of protest*—Copy of note.])—The annexing of a copy of the note to the protest, or affixing it to the notarial act, is sufficient.—*L. v. BOUTON* (1852), 8 U. C. R. CAN.

f. —.])—*Certificate of notice*—A certificate of a notary signed by him of notice sent, indorsed on the instead of being written on or embodied in the protest, y complies with 7 Vict. c. 4. —*LYMAN v. BO* U. C. R. 323.—CAN.

g. —.])—*Each bill must have* 2 Sh. (Ct. of Sess.) 328.—SCOT.

k. S. P. *NAPIER v. CAMON* 6 Sh. (Ct. of Sess.) 600.—SCOT.

l. —.])—*Whether seal*—*Scmble*: a seal is not necessary to a protest.—*GOLDIE v. MAXWELL* (1841), 1 U. C. R. 424.—CAN.

m. —.])—A notarial protest from Lower Canada, certified by notary as a true copy from his notarial book, is sufficient without notarial seal.—*ROSS v. MC* (1844), 1 U. C. R. 507.—CAN.

defective for want of a BANK v. SPINNEY 1 R. & G.

r who use official seal, or subscribe himself in writing a notary public; any seal which he declares in the protest to be his official seal is sufficient, & placing his signature before the printed words "notary is an adoption of then BANK OF CANADA 17 C. P.

bill protested.])—It is that on the face of the protest should be name of the party, at whose a bill has been protested. a protest need

#### SUB-SECT. 3.—PLACE OF

See 1882 Act, s. 51 (6).

1971. Where bill dishonoured.])—A foreign bill of exchange was drawn on A. & B. at Liverpool, payable to C. in London. The drawees having refused to accept, it was accepted by D. in London for the honour of the payee, if regularly protested, & refused when due. In an action against the acceptor for honour:—*Held*: by the special form of the acceptance, a presentment for payment to the drawee in Liverpool, a refusal by him, & a there, were necessary.—*MITCHELL v.* (1829), 10 B. ; 4 C. & P. 35; L. & Welsb. 41; Mood. & M. 381; 8 L. J. O. K. B. 18; 109 E. R. 352.

#### SUB-SECT. 4.—FORM AND S OF PROTEST AND OF NOTICE OF

See 1882 Act, ss. 51 (7) (8), 94. e cases, *infra*.

not bear to be "at the instance" of party, if it show at whose request it was taken.—*ELDER v. YOUNG* Co. (1854), 17 Duml. (Ct. of 27 Sc. Jur. 5. SCOT.

r. —.])—a bill was payable "at the bank office in & the protest bore that it " payable, duly protested",— the protest was regular.— *v. STEPHEN* (1845), 18 Sc. Jur. —SCOT.

s. —.])—The creditor in a bill payable on demand at his own presented the bill there, & pay- not having been made by debtor, the bill. The narrative of he protest bore that, "J. A., notary public, presented the bill at the place where payable to a clerk there, who made answer that no funds had been provided to meet the bill, & payment

, as all that the protest recorded was the presentation of the bill for payment by the creditor to

an agent of debtor for payment to himself, & debtor not having been present at the place where he under- took to

on v. POOL & Co. R. (Ct. of Sess.) 328; 33 Sc. L. R. 8. L. T. 206. —SCOT.

t. —.])—*date of protest.*—In an action the maker & the omission to in a notarial protest that it was in the forenoon of the day of was fatal.—*JONKIN v.* ), 1 L. C. R. 244.—CAN.

w. By whom protest may be taken 16), 14 U. C. R. 230.—CAN.

x. —.])—*Not by notary who is also* *Nov.*—*KIRK* (1827), 6 of Sess.) 133; 3 Fac. Coll. 125. y.

TRUSTEES (1836), 14 Sh. 2.—SCOT

of —.])—to a protest of a bill of drawn by a co., that the notary by

## 296 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 5.—Noting and protest: Sub-sects. 5 & 6.**  
**Part X.**

**SUB-SECT. 5.—PROOF OF PROTEST AND OF NOTICE OF**

**1972. Promise by drawer to pay—After maturity**  
—In an action against the drawer of a foreign bill of exchange, a promise of payment by deft. after the bill was due, is sufficient evidence of a protest for non-payment.—*GIBBON v. COGGON* (1809), 2 Camp. 188, N. P.

**1973. ———.]—A promise to pay a foreign bill of exchange, made after it is due, is evidence to support the allegation in the declaration of a protest.**—*GREENWAY v. HINDLEY* (1814), 4 Camp. 52, N. P.

**1974. ———.]—In an action against the drawer of a foreign bill of exchange, a promise made by deft. to pay the bill after the drawees had refused to accept it, is sufficient evidence to prove issues joined on pleas denying the protest & notice of protest, though such promise be subject to a condition which has not been complied with.**—*CAMPBELL v. WEBSTER* (1815), 2 C. B. 258; 1 New Pract. Cas. 348; 15 L. J. C. P. 4; 6 L. T. O. S. 101; 9 Jur. 992; 135 E. R.

**1975. Duplicate protests from notary's book.]**  
Where protests had been formally drawn up before payment for honour & sent to Moscow, & an action was brought by the party who had paid for honour, & it was alleged in the declaration that "the bill was duly protested for non-payment, & thereupon plff. declared before a notary public, that he would pay & did pay the bill under the protest": *Held*: duplicate protests made out from the notary's book after the action was brought were primary evidence as much as the protests sent to Moscow, & sufficient to support the allegation in the declaration, it having been proved that a protest in fact took place before the payment, that a declaration that the payment was for honour had been made before a notary, & that

those facts had been then recorded in the notary's book.—*GERALOPULO v. WIELER* (1851), 10 C. B. 690; 20 L. J. C. P. 105; 17 L. T. O. S. 17; 15 Jur. 316; 138 E. R. 272.

**SUB-SECT. 6.—EFFECT OF NOTING AND PROTEST.**

**1976. Evidence of non-acceptance.]—In an action over case upon a bill of exchange, protested for non-acceptance:—Held: protest was evidence *prima facie* that the bill was not accepted & sufficient to put the proof on the other side.—*DU COSTA v. COLE* (1888), 8 Kin. 272; 90 E. R. 123.**

**1977. Discharge of acceptor—On refusal to take conditional acceptance.]—A bill of exchange was drawn upon A. residing in London by a consignor of goods living abroad, & on its being presented for acceptance, A. said he could not then accept, because he did not know whether the ship would arrive at London or Bristol. B., the holder of the bill, agreed to leave it for some time, reserving the liberty of protesting it for non-acceptance from that day, in case A. did not accept. On a second application A. said that the bill would be paid, even if the ship were lost:—Held: B. having the liberty of refusing such conditional acceptance precluded himself from recovering against A. by afterwards noting the bill for non-acceptance.—*SPROAT v. MATTHEWS* (1786), 1 Term Rep. 182; 99 E. R. 1041.**

**1978. ——— On acceptance being cancelled before delivery back to holder.]—Whether or not an acceptance of a bill once made by the drawee may be cancelled or recalled by him before the bill be delivered back to the holder, at all events if the acceptance be so cancelled, & the holder cause the bill to be noted for non-acceptance, he cannot**

whom the protest was taken, liable, as a partner, for the debts of the drawers, in consequence of not having sufficiently notified his retirement, such ground of disqualification not being known, either to the public, or to the party who employed the notary, till after the date of the protest.—*SMITH v. M'KENZIE* 6 Fac. Coll. 40; 9 Sh. (Cl. of Scot. —SCOT.

It is no objection to a bill of exchange, made payable at the office of the son of the creditor, that it was taken by the son as notary.—*REID v. GRINDLAY* (1830), 9 Sh. (Cl. of Scot.) 31; and now. *HANKILLOR v. GRINDLEY*, 6 27.—SCOT.

**b. Effect of misdescription.**  
*As to name of maker.]—*  
of a note was described in J. H. P.:—*Held*: a plea b note was not note protest of J. B. C. J. 174; 1 L. C. L. J. 64.

the indorser of a promissory note writes below his signature his address, the town & number of the notice of protest should be in the same manner.—*v. JOHNSON* (1811), Q. R. 40 B. C. 511; 18 R. de J. 32.—CAN.  
further, Sect. 4, sub-sect. 5, C., 6, B. & C.,

### PART XII. SECT. 5, SUB-SECT. 5.

**d. In general.]—In foreign bills of exchange, the protest is necessary to prove the act of Vern. & Ser.**

**1. copy**  
*BANQUE NATIONALE v.*  
(191) 13 Q. P. R. 341.—CAN.

*BALLOON v.*  
(1 All.) 131.—CAN.  
proof of protest.—*(1848), 6 N. B. R.*

evidence of the protest.—*Cond*  
s (1850), 8 U. C. R. 242.—CAN.

**1. Whether evidence of notary admissible.]—In an action against the maker & indorser of a promissory note, the evidence of the notary who made the protest was held not to be admissible to contradict the notice filed by plff.**—*DORWIN v. EVANS* (1860), 1 L. C. R. 100.—CAN.

### PART XII. SECT. 5, SUB-SECT. 6.

**m. of facts**  
an action on a note, dated at O., in the State of New York:—*Held*: a protest of a notary of that State was no evidence of the facts therein stated, the stat., under which a protest was made *prima facie* evidence of those facts, only applying to protests made by notaries of Upper & Lower Canada.—*GRIFFIN v. JUDSON* (1862), 12 C. P. 430.—CAN.

**— Protest without seal.]—A without seal is admissible as of the facts therein contained, under 13 & 14 Vict. c. 23, s. 6.**—*RYANELL v. CHAFFIN* (1852), 1 C. P. 428



afterwards sue upon it as an acceptance.  
**BENTINCK v. DORRIEN** (1805), 6 East, 190; 2  
 Smith, K. B. 337; 102 E. R. 1263.  
*Annotation:—***Held.** **Cox v. Troy** (1822), 5 B. & Ald. 474.

1979. Not evidence that bill presented for pay-

ment in England.]—A notarial protest under seal  
 is no evidence that a foreign bill of exchange  
 has been presented for payment in England.  
**CHESMER v. NOYES** (1815), 4 Camp.  
 N. P.

## Part XIII.—Liability of Parties.

### SECT. 1.—FUNDS IN HANDS OF DRAWEE.

See 1882 Act, s. 53 (1).

See, also, Sect. 7, post.

1980. Bill of exchange—Accommodation bill—  
 Right to retain bill till discharged—Statute of  
 Limitations.—Where a sum of money has been  
 lodged with a party to indemnify him against bills  
 of exchange he has accepted for the accommodation  
 of another, an action will not lie against him to  
 recover the money while the bills are outstanding,  
 although Stat. Limitations has run upon them.—  
**MORSE v. WILLIAMS** (1813), 3 Camp. 418, N. P.

1981. — Not equitable assignment.—B.  
 having a fund in his hands belonging to C.:—  
*Held:* a bill of exchange drawn by C. on B. for  
 the exact amount of the fund was not an equitable  
 assignment.—**SHAND v. DU BUISSON** (1874), L. R.  
 18 Eq. 283; 43 L. J. Ch. 508; 22 W. R. 483.

*Annotation:—***Mentd.** **Levy v. Lovell** (1880), 14 Ch. D. 234.

— Not amounting to specific appropri-  
 ation.]—Pltfs. purchased from the New Orleans  
 bank a bill of exchange drawn on the L. bank.  
 The manager of the New Orleans bank at the  
 time told pltfs. that there was, or would be  
 at the maturity of the bill, a balance at the L.  
 bank more than sufficient to meet the bill, & that  
 there was no doubt it would be paid. The course  
 of dealing between the New Orleans bank & the

L. bank was that the former drew bills on the  
 latter, & employed them also to collect the money  
 receivable on bills remitted to them, the agreement  
 being that the L. bank was never to be under cash  
 advances, & the funds remitted had always been  
 sufficient to meet its acceptances. Soon after the  
 purchase, the New Orleans bank suspended pay-  
 ment, & the L. bank refused to accept the bill.  
 The funds in the hands of the L. bank were  
 abundantly sufficient to meet all their acceptances  
 for the New Orleans bank, & also to pay this bill:  
 —*Held:* the statements of the manager were  
 merely a correct statement of the course of business  
 between the two banks, & did not give the pur-  
 chaser of the bill any lien on the funds in the  
 hands of the L. bank.

If what was said by the manager had amounted  
 to a contract to charge the funds, the clearest  
 proof would have been necessary that he had  
 authority to make such a contract (**JAMES, L.J.**).  
 —**THOMSON v. SIMPSON** (1870), 5 Ch. App. 650;  
 39 L. J. Ch. 857; 18 W. R. 1090, L. C. & L.

*Annotation:—***Mentd.** **Citizens' Bank of Louisiana v.**  
**National Bank of New Orleans** (1873), L. R. 8 H. L. 352.

1983. — A representation, by the  
 drawer, that bills of exchange drawn upon L. will  
 assuredly be paid, for that the drawer has previously  
 remitted to L. funds to a much larger amount,  
 in consequence of which representation B. pur-  
 chases those bills from the drawer, does not  
 amount to an equitable assignment by the drawer

1. Whether evidence of  
 —In an action against the  
 drawer of a foreign bill, the protest is  
 of an acceptance payable at a  
 & of due presentment  
 at that place.—**TAKRATT v. WILMOT**  
 (1849), 6 N. B. R. (1 All.) 353.—CAN.

1979 U. —.]—The protest  
 of presentment.  
 (1850), 8 U. C. R. 242.—CAN.

1979 U. —.]—The mere noting  
 the bill, even if it discloses  
 of the notary in full, is not evidence of  
 the presentment of the bill.—**BOMBAY**  
**CITY BANK, LTD. v. MOONJEK HURRI-**  
**Bourke**, 274.—IND.

for  
 evidence of notice of dishonour.

A. R. 530.—CAN.

p. S. P. IRVIN v.  
 4 N. B. R. (2 Kerr) —CAN.

q. —.]—The certificate of  
 half sheet  
 that he had served on  
 a notice of non-payment, is  
 of such notice  
 C.

In an

of  
 must be of the notary that he had  
 due notice upon the indorser  
 was insufficient.—**SEED v. COURTNEY**  
 (1853), 3 L. C. R. 303.—CAN.

a. —.]—The certificate of a  
 notary in Lower Canada, at the  
 of the protest, that he had put  
 notice into the post addressed to  
 indorser, is evidence of that  
 under 7 Vict. c. 4, s. 2.—**SMITH**  
**HALL** (1847), 3 U. C. R. 315.—CAN.

1. —.]—In on two  
 "no of non sym A  
 of note on the  
 note the other

on  
 that but did not state when:—*Held:*  
 sufficiently proved as to both  
 —**WOOD v. HURT** (1851), 9  
 C. R. 244.—CAN.

w. —.]—The mere noting on  
 bill, even if it disclo  
 of the notary in full, is  
 of the dishonouring of  
**BOMBAY CITY BANK, LTD. v.**  
**HURRI-BORKE** (1865), Bourke, 274.  
 IND.

x. Of foreign bill Notice  
 of dishonour of a bill of  
 the bill, in which the notary  
 that he has given the parties  
 v. CAMERON (1843), O.  
 —CAN.

y. —.]—Receipt of  
 A protest is only of  
 of  
 in they had  
 no 10  
 R. 561.

z. By drawer—To whom bill  
 to get payment from acceptor—Drawer  
 not discharged.]—The drawer of a bill  
 induced the holder to delay presenting  
 it for payment when due. After the  
 protracted term had elapsed, the  
 drawer, at his own request, had the  
 to him by the holder to receive  
 hereafter protested it for  
 but neglected to use  
 of diligence against the

the drawer was liable in  
 ment of the contents of the bill,  
 want of

14

of

*Sect. 1. Funds in hands of drawee. Sect. 2:*  
[1.]

of the funds in the hands of L., nor to a specific appropriation out of those funds, of the amount of each of those bills; & where such an assurance had been given, & the funds in the hands of L. were larger than the amounts of the bills drawn upon him, but a bkpcy. of the drawer took place before the bills were payable:—*Held*: L. was justified in refusing to pay the particular bills, & in handing over the funds to the legally appointed receiver of bkpt.'s estate, who demanded them on behalf of the general creditors of the drawer.

L. was a banker in England, & had dealings with N., a banker & bill dealer in America. The course of business was that N. remitted funds to L., & then drew bills on L., & sold those bills in America to persons who wished, in that way, to make payments in England. N. had represented to intending purchasers of the bills that they would certainly be paid, for that "the bills were drawn expressly [or "specially"] against funds to a much larger amount already remitted to L.," & on the faith of such assurance they were purchased:—*Held*: that did not amount to a contract entitling the purchaser of any one of the bills to a specific portion of the funds in the hands of L.—*CITIZENS' BANK OF LOUISIANA v. FIRST NATIONAL BANK OF NEW ORLEANS* (1873), 1 L. R. 6 H. L. 352; 43 L. J. Ch. 269; 22 W. R. 194, H. L.

*Annotations*: *Mentd.* *Mills v. Fox* (1887), 37 Ch. D. 153; *Coxon v. Gorst*, (1891) 2 Ch. 73; *Williams v. Pinckney* (1897), 67 L. J. Ch. 34; *Coleman v. North* (1898), 47 W. R. 57; *Lovett v. Lovett*, (1898) 1 Ch. 82; *Rainford v. Keith & Blackman* (No.), (1905) 1 Ch. 298; *Gresham Life Assco. Soc. v. Crowther*, (1914) 2 Ch. 219.

**1984.** — A firm at Liverpool & a firm at Pernambuco employed B. as their agent at New York. According to their course of business the firm at Pernambuco received orders from persons there to purchase goods at New York. The firm instructed the Liverpool firm, who instructed B. B. then purchased the goods in New York & shipped them to the firm at Pernambuco with the bills of lading. B. drew bills on the Liverpool firm to pay for the goods, but not for the precise amount of the shipments, & sold the bills in New York. B. advised the Liverpool firm of the bills & with the advice forwarded a statement of his account with them. To each bill was attached a counterfoil headed, "Advice of draft," & containing a memorandum of amount of the bill & the name of the drawer, with the words, "Against shipments per [naming the vessel]. Please protect the draft as advised above." The Liverpool firm, on the bills being presented to them for acceptance, detached the counterfoils & kept them in their own possession. Pltfs. were the holders for value of bills drawn on the Liverpool firm in accordance with such course of dealing, the goods having been shipped by B. to the Pernambuco firm & the bills of lading being also sent to that firm. On June 10, 1879, the Liverpool firm stopped payment. The three bills having been dishonoured by the Liverpool firm pltfs. brought an action against the Pernambuco firm claiming to have the bills paid out of the proceeds of the goods as having been specifically appropriated to meet the bills:—*Held*: there was no specific appropriation of the goods either by the course of dealing or by the "advice of draft" attached to the bills.—*PHILPS, STOKES & Co. v.*

Ch. D. 818; 54 L. J. Ch. 1017;

L. T. 873; 33 W. R. 829; 5 Asp. M. L. C. 428, C. A.

*Annotation*:—*Mentd.* *Booth S.S. Co. v. Cargo Fleet Iron Co.*, [1916] 2 K. B. 570.

**1985.** — *Rights of holder.*—In an action for money had & received, the following evidence was given. J. was indebted to pltfs., & was also a creditor of the S. & F. Co., Ltd., which was being wound up, & deft. was the official liquidator. J. signed the following document: "Isle of Man, July 15, 1865. On Aug. 1 next, please to pay to pltfs. or order £600, on account of money advanced by me to the S. & F. Co., Ltd. To deft., official liquidator of the co." The document was sent by J. to pltfs. in England, & they forwarded a copy to deft., who was also in England, requesting to know whether he would honour the order, & he replied he would when funds came into his hands about Aug. 15. Funds did come into his hands soon after that time, but owing to a dispute as to the amount remaining due to J. nothing was then paid, & after much correspondence, in which pltfs. continually demanded payment of the order, but never parted with it, the action was brought:—*Held*: the evidence showed a contract binding on deft.—*GRIFFIN v. WEATHERBY* (1868), L. R. 3 Q. B. 753; 9 B. & S. 726; 37 L. J. Q. B. 280; 18 L. T. 881; 17 W. R. 8.

*Annotation*:—*Mentd.* *Greenway v. Atkinson* (1881), 29 W. R. 560.

**1986.** — ——. *B. consigned to defts. by the ship A. a cargo, which had been purchased at the joint risk of himself & defts., & advised them of the particulars of bills which he had drawn against the cargo payable to his own order. Defts. replied, promising to protect the bills. B. indorsed to pltfs. three of the bills, which ran: "Pay to the order of myself & sterling, which place to account cargo per A." B. having stopped payment, defts. refused to accept the bills, but after selling the cargo, offered to pay to pltfs. the surplus of the proceeds, after satisfying a balance due to them from B. on the general account between them. Pltfs. refused to accept this, & filed their bill, claiming a lien for the full amount of the three bills:—*Held*: pltfs. had no lien on the proceeds of the cargo.—*ROBEY & Co.'s PERSEVERANCE IRONWORKS v. OLLIER* (1872), 7 Ch. App. 695; 27 L. T. 362; 20 W. R. 956; 1 Asp. M. L. C. 413, L. JJ.*

*Annotations*:—*Consd.* *Re Snee, Ex p. Dever* (1884), 13 Q. B. D. 766; *Brown, Shipley v. Kough* (1885), 29 Ch. D. 848. *Reid.* *König v. Brandt* (1901), 84 L. T. 743. *Mentd.* *Re Entwistle, Ex p. Arbuthnot* (1876), 3 Ch. D. 477; *Hanken v. Alfaro* (1877), 3 Ch. D. 786; *Phelps, Stokes v. Comber* (1885), 29 Ch. D.

**1987.** — ——. *R. & Co., of Brazil, in the of exchange operations with A., of Man- drew bills on him for £2,000, which they sold to pltf., & about the same date transmitted to A. acceptances of another house for £1,900 to cover the bills drawn. Before the covering remittances reached England, R. & Co. stopped payment & presented a petition for liquidation. A., being also in difficulties, refused to accept the bills drawn on him, & also became a liquidating debtor. Pltf., as holder of the dishonoured bills, filed a bill against the trustees of the estates of R. & Co. & A., praying that the remittances might be applied in payment of the bills:—*Held*: pltf. had no equity to support the bill.—*VAUGHAN v. HALLIDAY* (1874), 9 Ch. App. 561; 30 L. T. 741; W. R.*



## PART XIII.—LIABILITY OF PARTIES.

**1988.** ———.]—A. consigned coffee to M., L., & Co., & drew bills upon them, which they declined to accept. R. was the holder of some of the bills. A. finding that M., L., & Co. would not accept the bills, wrote to S., requesting him to realise the coffee, honour the bills, telegraph for a remittance if the proceeds would not cover the bills, & conduct the business so as to prevent A.'s reputation from suffering. On Aug. 14, the day before the day on which the bills held by R. became payable, S. wrote to him a note specifying the bills & saying, "Take note that I expect to receive early next week delivery of the coffee sent by drawer against the above, & that I will then again write to you on this subject." Three days after that S. wrote to R., "Referring to my memorandum of the 14th inst., M., L., & Co. have handed me the warrants for the coffee. I shall dispose of same as instructed by sender, & will let you have further particulars in due time." On the same day S. was served with an attachment out of the Lord Mayor's Ct. at the suit of M., L., & Co., as creditors of E. A. & Co., whom they alleged to have an interest in the coffee. R. filed his bill to restrain the proceedings in the Lord Mayor's Ct., & to establish his interest in the proceeds of the coffee. The bill having been dismissed, on the ground that R. had not any specific charge on the proceeds, & had no such title as would support a bill:—*Held*: the letters gave R. an equitable charge on the proceeds of the coffee, & he had a *locus standi* to maintain the suit.—*RANKEN v. ALFARO* (1877), 5 Ch. D. 786; 46 L. J. Ch. 832; 36 L. T. 529, L. JJ.

**1989.** ——— Funds in hands of drawee's banker.—Rights of holder.]—A bill of exchange, payable at the house of A., was there presented for payment & dishonoured. The acceptor afterwards remitted to A. a sum of money for the purpose of enabling him to pay the dishonoured bill, & also another of less value, & A. in answer stated the fact of the bill having been dishonoured, but added, that the money received should be carried to the acceptor's account, & did afterwards pay the smaller bill:—*Held*: the holder of the original bill could not maintain an action against A., there being no privity between them.—*YATES v. BELL* (1820), 3 B. & Ald. 643; 106 E. R. 706.

**1990.** ———.]—Where the acceptor of a bill paid money to his bankers, debtors, at whose correspondents' house it was payable, for the purpose of taking that & other bills up, & they promised him to apply it to such purposes, & entered the particular bill to their credit in their books, but it did not appear that they had their correspondents to pay it:—*Held*: the drawer, the holder of the bill, could not sue the bankers for the amount of the bill, there being no privity to sustain the action.—*MOORE v.* (1857), 27 L. J. Ex. 3.

*Hill v. Royds* (1869), L. R. 8

**1991.** ———.]—The acceptor of a bill of exchange paid the amount to his bankers in

order to meet the bill. On the day it arrived at maturity the acceptor died, & the bankers dishonoured the bill, which was returned to the drawers, & subsequently paid by them. Upon bill filed by the drawers against the bankers to make good the amount:—*Held*: there was no privity between plaintiffs & debtors, & the bill must be dismissed.—*HILL v. ROYDS* (1869), L. R. 8 290; 38 L. J. Ch. 538; 20 L. T. 842

**1992.** Cheque—Not equitable assignment.]—A cheque is not an equitable assignment of the drawer's balance at his bankers.—*HOPKINSON v. FORSTER* (1874), L. R. 19 Eq. 74; 23 W. R. 301.

*Annotations*:—*Reid, Schroeder v. Central Bank of London* (1876), 34 L. T. 735; *Re Beaumont, Beaumont v. B.* 1 Ch. 889.

**1993.** ———.]—A cheque is a mere order to pay & is not an assignment of anything, & it cannot be an absolute assignment of a debt or legal chose in action within Jud. Act, 1873, s. 25 (6).—*SCHROEDER v. CENTRAL BANK OF LONDON, LTD.* (1876), 34 L. T. 735; 24 W. R. 710; 2 Char. Pr. Cas. 77.

*Mentd.* *Read v. Brown* (1888), 22 Q. B. D. 479; *Re Gunzburg, Ex p. Trustee* (1919), 88 L. J. K. B.

**1994.** ———.]—The delivery of a donor's own cheque to a donee does not operate as an equitable assignment to the donee of any part of the donor's balance at the bank.—*Re BEAUMONT, BEAUMONT v. EWBANK*, [1902] 1 Ch. 889; 71 L. J. Ch. 478; 80 L. T. 410; 50 W. R. 389; 46 Sol. Jo. 317.

*Annotation*:—*Reid, Re Leaper, Blythe v. Atkinson*, [1910] 1 Ch. 579.

**1995.** ——— Funds in German bank in hands of English bank—Running account.]—*Held*: Trading with the Enemy Amendment Act, 1914 (c. 12), s. 4 (1), was directed against specific property which could be definitely pointed out, & did not include an alleged credit balance on a running account between the enemy & a bank, the existence of which balance was denied by the bank.—*Re BANK FÜR HANDEL UND INDUSTRIE*, [1915] 1 Ch. 848; 84 L. J. Ch. 435; 118 L. T. 228; 31 T. L. R. 311.

*See, generally, ALIENS, Vol. II., pp. 151 et seq.*

**Securities for bills—Bills drawn against specific goods or securities.**—*See Part XXIII., Sect. 8, ; BANKERS & BANKING, Vol. III., pp. 250–253.*

### 2.—LIABILITY OF ACCEPTOR.

#### SUB-SECT. 1.—IN GENERAL.

*See 1882 Act, ss. 54 (1), 88 (1).*

**1996.** To pay.]—The acceptance of a bill of exchange amounts, by the custom of merchants, to a promise to pay it, & the ct. will intend the

#### PART XIII. SECT. 2, SUB-SECT. 1.

**1996 i.** To pay.]—An action of debt will lie by drawer against acceptor of a bill of exchange on his contract of acceptance, & it is not cause of demurrer that it is not stated that any were in debt's hands at the time

of his acceptance. (1836), 4 Ir. L. Rec. 8. I.—IR. dressed to K. & M. o sent Some one added the as drawee & T. sought to

liability upon the that the bills were not a to him & K. & M. on the ground that that from denying that he was a party when he signed the acceptance of a bill which his

*of acceptor: Sub-sects. 1 & 2.]*

to be within the custom.—**BARNABY v. RIGALT** (1633), Cro. Car. 301; 79 E. R. 864.

**1997.** —[Acceptance of a bill of exchange is an actual promise to pay.—**MUTFORD v. WALCOT** (1700), 1 Ld. Raym. 574; 91 E. R. 1283; *sub nom.* **MUTFORD v. WALLICOT**, 1 Salk. 129; 12 Mod. Rep. 410; *sub nom.* **GREGORY v. WALCUP**, 1 Com. 75.

*Annotations:—***Reid**, Lumley v. Palmer (1734), Cunn. 136; Wynne v. Raikes (1804), 2 Smith, K. B. 98. **Mentd.** Smith v. Abbot (1741), 2 Stra. 1152; Rowe v. Young (1820), 2 Bll. 391.

**1998.** —More than one bill accepted for same debt.—Where two or more bills are accepted by a firm, each of them for the whole price of an article furnished, & the bills get into the hands of bona fide holders for valuable consideration the firm is liable for them all.—**DAVIDSON v. ROBERTSON** (1815), 3 Dow. 218; 3 E. R. 1044, H. L.

*Annotation:—***Consd.** Yorkshire Banking Co. v. Beatson (1880), 5 C. P. D. 109.

**1999.** —At all events—Different from that of drawer or indorser.—An acceptor of a bill is not discharged by the bill not being presented for payment for three or four years after it becomes due. He is only discharged by payment of the bill, or by a distinct & direct agreement by the holder to discharge him.

The liability of an acceptor is different from that of a drawer or indorser. The acceptor is liable at all events, & is not discharged, unless the bill be paid, or there be an express agreement to discharge him, or a distinct renunciation of his

liability (**LITLEDALÉ, J.**).—**FARQUHAR v. SOUTHEY** (1826), 2 C. & P. 497; Mood. & M. 14, N. P.

**2000.** Admission of assets.—Every bill of exchange imports a command to the drawee to pay, & his acceptance is not only an admission of money or effects in his hands sufficient to pay, but is an undertaking by the acceptor as well with respect to the drawer as the payee to pay the bill.—**PARMINTER v. SYMONS** (1748), 2 Bro. Parl. Cas. 43; 1 E. R. 780, H. L.; *affg.* S. C. *sub nom.* **SIMMONDS v. PARMINTER** (1747), 1 Wils. 185

*Annotation:—***Reid**, Pillans v. Van Mierop (1763), 3 Burr.

**2001.** —[The acceptance is proof that the acceptor has assets of the drawer in his hands, & he ought never to part with them, unless he is sure that the bill is paid by the drawer.—**ANDERSON v. CLEVELAND** (1769), 13 East, 430, n.; 104 E. R. 438.

*Annotation:—***Consd.** Price v. Edmunds (1829), 5 Man. & Ry. K. B. 287.

**2002.** —[The acceptance of the drawee is *prima facie* evidence of his having effects of the drawer in his hands.—**VERE v. LEWIS** (1789), 3 Term Rep. 182; 100 E. R. 522.

*Annotations:—***Apld.** Minet v. Gibson (1789), 3 Term Rep. 481. **Mentd.** Wilson v. Barthrop (1837), 8 L. J. Ex. 251; Bank of England (1889), 23 Q. B. D. 243.

**2003.** Liability accrues on acceptance.—An action upon a bill of exchange lies for the drawer against the drawee after he has accepted it.—

& K. & M. were liable, as it was not shown they accepted on the faith of T.'s name, & as it was probable T.'s name was added by them or at their instance.—**STERLING BANK OF CANADA v. THORNE** (1919), 15 O. W. N. 343.—CAN.

III. —[**BANQUE NATIONALE** v. CAN. 2), 10 N. S. J.

for payment of party found in not to have the process till the of an accounting, on of intrusions, h g in his correspondence that the ade great advances on NO v. STRATHMORE 4 Sh. (Ct. of Sess.) 310.—SCOT.

ment.)—A bill of drawee by plff. on del to of a bank, acc to plff. in the hands of the for to by the bank without any in by the M.

to its tenor enforceable by the holder, the bill had not been

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1999 II

or by the payee. In an action by against acceptor;—**Held**: the of the bill to the drawer, unpaid, ed to him the right of action on t bill, without indorsement.—B (1888), 5 W. W. &

III. of

drawn by J. & Co. to their order was accepted by S. & was indorsed by J. & Co. to C., who discounted the bill. The bill was dishonoured, whereupon C. returned the bill to J. & Co., but without re-indorsement. In an action by J. & Co. against S. on the bill:—**Held**: the drawers had the right to sue the acceptor on the bill, by virtue of being a party to the bill & as suing on the contract contained in the bill between themselves & the acceptor.—**JAMESON & Co. v. SCOTT** (1908), 1 L. R. 36 Calc. 274.—IND.

**1999 IV.** —[qualified or unqualified.]—On June 24, 1914, A., a German residing in Hamburg drew a bill of exchange upon British subjects carrying on in Bombay, in favour of a British bank carrying on in London, Bombay, & elsewhere for £55 9s. 6d., payable at 30 days' sight to order of plffs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was presented to defts. for acceptance with the shipping documents relating to the bales of goods mentioned in the bill & was accepted by them on July 20, 1914, payable at the office of plffs. in Bombay. The steamer reached Bombay just before the outbreak of war between Great Britain & Germany, & in order to evade capture left Bombay & took shelter in the neutral port of Marmagosa. The bill was dishonoured by non-payment. On Dec. 13, 1914, a Proclamation authorized all British subjects residing or carrying on business in British India to make payments for the post of obtaining their cargoes in neutral ports to the agents of ship-owners resident in any enemy country. Plffs. filed a suit in Sept., 1915, to recover the amount due on the bill:—**Held**: plffs. were entitled to succeed,

inasmuch as if the unqualified, defts. were bound to pay on due date, & if the acceptance was qualified, they were bound to pay "at or after maturity" when the money was demanded after the Proclamation, whereunder consignees were permitted to take delivery of goods from enemy ships in neutral ports.—**MOTISHAW & Co. v. MERCANTILE BANK OF INDIA** (1916), 1 L. R. 41 Bom. 566.—IND.

a. —[Bill accepted for firm " & self."]—A bill of exchange, drawn upon & addressed to "M. Co." as the drawee, was accepted by M., one of the partners, "for M. Co. and self":—**Held**: the acceptance did not entitle the drawer to be paid out of the separate estate of M. in a suit for administration of his assets.—**MALCOMSON v.** (1878), 1 L. R. Ir. 228.—

2.)—A declaration a inst drawer & acceptors, after av the acceptance & indorsement to plffs., proceeded as "Whereby defts. became severally liable to pay to plffs. the amount," etc. Demurrer for that defts. accepted jointly but were sought to be made liable jointly & severally:—**Held**: the declaration as framed was bad, as the acceptors were jointly liable as such, & jointly & severally liable together with the drawer.—**BANK OF UPPER CANADA v.**

Where accepting a of make themselves jointly but not liable, the drawer cannot any one of them to be the amount by civil bill, & if he make the others defts. the civil will be dismissed without pre- v. MAGNUM (1881), 15



*v. PARMINTER* (1747), 1 Wils. 185; 95 E. R. 564; *affd. sub nom. PARMINTER v. SYMONS* (1748), 2 Bro. Parl. Cas. 48, H. L.

*Annotation:—Reid. Pillans v. Van Mierop* (1765), 3 Burr. 1663.

**2004. To indemnify drawer or indorser paying bill.]—**The indorser of a bill, being sued by the holder, paid him part of the sum mentioned in the bill:—*Held*: he might recover same from the acceptor, in an action for money paid to his use.—*POWELL v. FERRAND* (1827), 6 B. & C. 439; 9 Dow. & Ry. K. B. 603; 108 E. R. 513; *sub nom. POWELL v. TENANT*, 5 L. J. O. S. K. B. 176.

*Annotations:—Consd. Jones v. Broadhurst* (1850), 9 C. B. 173; *Re Fox, Walker, Ex p. Bishop* (1880), 15 Ch. D. 400. *Reid. Dawson v. Morgan* (1829), 9 B. & C. 618; *Cook v. Lister* (1863), 13 C. B. N. S. 543. *Mentd. Asprey v. Levy* (1847), 16 M. & W. 851.

**2005. —.]—**The acceptor of a bill of exchange knows that, by his acceptance, he does an act which will make him liable to indemnify any indorser of it, who may afterwards pay it.—*DUNCAN, FOX & CO. v. NORTH & SOUTH WALES BANK* (1880), 6 App. Cas. 1; 50 L. J. Ch. 355; 43 L. T. 706; 29 W. R. 763, H. L.

*Annotations:—Reid. Aga Ahmed Ispahany v. Crisp* (1891), 8 T. L. R. 132; *Nicholas v. Ridley*, [1904] 1 Ch. 192; *Jowitt v. Union Cold Storage Co.*, [1913] 3 K. B. 1. *Mentd. Forbes v. Jackson* (1882), 19 Ch. D. 615.

**2006. — On proof that such indorser paid.]—**In an action upon a bill of exchange brought by an indorsee, who has been sued upon it against the acceptor, pltf. must prove that he paid the party who sued him. *Qu.*: whether upon a foreign bill he must not produce a receipt upon the protest.—*MENDEZ v. CARRERON* (1700), 1 Ld. Raym. 742; 91 E. R. 1397.

**2007. For amount due to indorsee from immediate indorser—Not for amount due from prior indorser.]—**In an action on a bill of exchange for £98 5s. 3d. by second indorsee against acceptor, the pleadings admitted that the acceptance & first indorsement were without consideration, & the issue was whether pltf. gave value for the indorsement to him. He relied in the first instance on the mere production of the bill, but on deft.'s objecting

*d. —.]—*The drawer of a bill having pursued the acceptors for relief of a proportion of its contents, upon the allegation that all parties had joined in the bill for the accommodation of a third person not named therein:—*Held*: the joint liability created against the acceptors, *ex facie* of the document, must receive effect, subject to the admitted proportional restriction, unless taken off by the writ or oath of the drawer.—*M'GIBSON v. GIBSON* (1831), 9 Sh. (Ct. of —SCOT.

**2004. To indemnify drawer or indorser paying bill.]—**A. & B. joint & several note to C., who it to D., B. signing as surety for A., & an action was brought by the holder against A., B., & C., for the amount of the note, which was paid by B., together with the costs of suit:—*Held*: B. was entitled to recover the amount paid by him, being a mere surety, & also a moiety of the costs as liable.—*BLAKE v. HARVEY* C. P. 417.—CAN.

*—.]—*Action on a note for July 25, 1872, made by — to the order of S., & to have been indorsed by S. to

that he was bound to prove consideration, he gave evidence of the debt to the amount of £57 due to him from the first indorser & of another debt to the amount of £20 18s., due to him from his immediate indorser, for goods sold:—*Held*: that he was entitled to a verdict only for the latter amount.—*SIMPSON v. CLARKE* (1835), 2 Cr. M. & R. 342; 1 Gale, 237; 5 Tyr. 593; 4 L. J. Ex. 255; 150 E. R. 148.

*Mentd. Isaacs v. Farrar* 5 L. J. Ex. 94; *Mills v. Barber* 1 M. & W. 410.

*See, further, Part X., Sect. 3 & Sect. 8, sub-sect. 1, ante; Part XIV.,*

#### SUB-SECT. 2.—ESTOPPEL OF ACCEPTOR.

*See* 1882 Act, ss. 54 (2), 88 (2).

**2008. Genuineness of drawer's signature. —**In an action against the acceptor of a bill the hand of the drawer need not be proved.—*WILKINSON v. LUTWIDGE* (1725), 1 Stra. 648; 93 E. R. 758, N. P.

*Annotations:—Reid. Lumley v. Palmer* (1734), Cunn. 136; *Pillans v. Van Mierop* (1765), 3 Burr. 1663; *Sanderson v. Collman* (1842), 4 Man. & G. 209.

**2009. —.]—**The acceptor cannot set up a forgery of the bill.—*JENYS v. FAWLER* (1733), 2 Stra. 946; 93 E. R. 959, N. P.

*Consd. Smith v. Mercer* (1816), 1

**2010. —.]—**In an action by indorsee against acceptor of a bill of exchange, the witness called to prove the handwriting of the drawer stated, that neither the drawing nor indorsement were of the handwriting of the person whose they purported to be, but it was proved that deft. had acknowledged the acceptance to be his, & it was contended, that, as the acceptance admitted the drawing to be correct, the jury might find for pltf., if they thought, upon inspection of the bill, that the drawing & indorsement were of the handwriting:—*Held*: it was necessary that

pltf. M., on Jan. 17, had given bond to the assignee in insolvency of S., conditioned, if S. should fail to pay 43 cents. in the dollar by July 10, to pay to the assignee \$500, or so much as should be required to make up the

note for his accommodation, & got F. to indorse it afterwards, in order to give it to M. as security against his bond, which he did. N. having been sued on the bond, compelled F. to pay him the amount of the note, & F. & his partner then sued deft. as maker:—*Held*: the relationship of

between F. & deft. was not so as to prevent pltf. from from deft. more than half the amount of the note.—*FISKE v. M* 40 U. C. R. 146.—CAN.

III. — Extent & a

To the & paid to him. The notes with of B., in & a third at B.

l, on bank to keep o the amounts of the former (1864), Gr.

f.

A Govt. promissory note of which renewal was sought had become covered with indorsements of pay- interest, in accordance with Govt. practice, that a slip of paper had been attached to it by the Govt. for the purpose of allowing further indorsements on payment of interest to be made: & that in consequence of having this paper attached, covered with indorsements, the was practically the Govt. were bound to renew the note.—*MONMOUTH v. DENI v. TAYLOR* (1874), 13 B. L. R. W. R.

not affected by holder suing all liable in one action.)—C. B. U. C. a. 43, which permits the holder of a note or bill to sue all parties liable upon it in one action, does not affect the rights & liabilities of debtors as between themselves, but leaves them as if they had been sued separately.

## 302 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### *Sect. 2. — Liability of acceptor: Sub-sect. 2.]*

proof should be given, as to whose the handwriting was.—**ALLPORT v. MEEK** (1830), 4 C. & P. 267, N. P.

*Annotation:—Mentd.* Doe d. Mudd v. Buckernore (1836), 5 Ad. & El

**2011.** ———.]—In an action by indorsee against acceptor of a bill of exchange, the ct. refused to allow a plea denying the drawing, as well as a plea denying the acceptance.—**GILMORE v. HAGUE** (1835), 1 Har. & W. 523.

**2012.** ———.]—The acceptor of a bill cannot, in an action against him by an indorsee, dispute the handwriting of the drawer, & if he do so by plea, plff. may reply the acceptance by way of estoppel.—**SANDERSON v. COLLMAN** (1842), 4 Man. & G. 209; 4 Scott, N. R. 638; 11 L. J. C. P. 270; 134 E. R. 80.

*Annotations:—Consd.* Armani v. Castrique (1844), 13 M. & W. 443. *Follid.* Smith v. Marsack (1848), 6 C. B. 486; *Hallifax v. Lyle* (1849), 3 Exch. 446. *Consd.* Ashpitel v. Bryan (1863), 3 B. & S. 474. *Refd.* Braithwaite v. Gardiner (1846), 8 Q. B. 473; *Phillips v. Im. Thurn* (1865), 18 C. B. N. S. 400. *Mentd.* Freeman v. Cooke (1848), 2 Exch. 654; *Cave v. Mills* (1862), 7 H. & N. 913; *Swan v. North British Australasian Co.* (1862), 7 H. & N. 603; *Dawes v. Harness* (1875), 44 L. J. C. P. 194.

**2013.** ——— & of his indorsement—Bill accepted & negotiated with knowledge of forgery.]—A bill of exchange, purporting to be drawn by B. & W., a really existing firm, payable to their order, & to be indorsed by them, was negotiated by the acceptor with that indorsement upon it. The drawing & indorsement were forgeries:—*Held*: if the bill was accepted, & negotiated by the acceptor, with knowledge of the forgery, he was estopped to deny the indorsement, as well as the drawing, by B. & W. *Semble*: where the name of a real party, as the drawer, was forged, a party who accepted the bill in ignorance of the forgery, was estopped to deny the drawing only, but not the indorsement, although in the same handwriting.—**BREMAN v. DUCK** (1843), 11 M. & W. 251; 12 L. J. Ex. 198; 152 E. R. 796.

*Annotations:—Refd.* Ashpitel v. Bryan (1863), 3 B. & S. 474; *Garland v. Jacomb* (1873), L. R. 8 Exch. 216; *London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 96; *Vagliano v. Bank of England* (1889), Q. B. D. 243. *Mentd.* Swan v. North British Co. (1862), 7 H. & N. 603.

**2014.** Capacity & authority of drawer to draw—Authority to indorse—Indorsement before acceptance.]—The acceptance of a bill drawn by procuration admits the drawer's handwriting, & the procuration to draw, but though the bill is indorsed by the same procuration, the date thereof not appearing, the acceptance does not admit the procuration to indorse; so, though the indorsement were made before the acceptance.—**ROBINSON v. YARROW** (1817), 7 Taunt. 455; 1 Moore, C. P. 150; 129 E. R. 183.

*Refd.* Prescott v. Flinn (1832), 9 Blug. 19; *Duck* (1843), 11 M. & W. 251; *Hallifax v. L. R. 8 Exch. 216; London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 96.

**2015.** Place of drawing—Bill purporting to foreign bill—Actually drawn in England.]—In an action by indorsee against acceptor of a bill, which upon the face of it purported to be a foreign bill:—*Held*: deft. was not estopped from showing, that, though dated abroad, the bill was in fact drawn in London, although it was proved that that was done at his express request, & that plff.,

who took the bill for value, was not cognisant of the circumstances.—**STEADMAN v. DUHAMEL** (1845), 1 C. B. 888; 14 L. J. C. P. 270; 5 L. T. O. S. 391; 135 E. R. 792.

*Annotation:—Mentd.* Cave v. Mills (1862), 6 L. T. 650.

**2016.** ———.]—In an action by indorsee against acceptor of a bill of exchange dated abroad, deft. is not estopped from showing that the bill was drawn in England, & improperly stamped as an inland bill; & that is a fact to be determined by the judge.—**BENNISON v. JEWISON** (1848), 12 Jur. 485.

**2017.** Drawing, acceptance, indorsement, & dishonour of bill within city of London—Plea to jurisdiction in Lord Mayor's Court, London—Bill made payable at London bank.]—A plea to the jurisdiction in an action by *concessit solvere* in the Lord Mayor's Ct., London, by indorsee against acceptor of a bill of exchange made payable at a banker's in London, but not specially, admits the drawing, acceptance, indorsement, & dishonour of the bill, but not that any one of them took place within the city of London.—**SEWELL v. CHEETHAM** (1874), L. R. 9 C. P. 420; 43 L. J. C. P. 239; 38 J. P. 696; 22 W. R. 695.

**2018.** Bill payable to drawer's order—Drawer's capacity to indorse—Infancy.]—In an action by indorsee against acceptor of a bill of exchange it is no defence that the drawers, who had drawn the bill payable to themselves, & indorsed it, were infants when the bill was drawn.—**TAYLOR v. CROKER** (1802), 4 Esp. 187, N. P.

*Annotations:—Consd.* Sanderson v. Collman (1842), 4 Man. & G. 209. *Refd.* Drayton v. Dale (1823), 2 B. & C. 293; *Pitt v. Chappelow* (1841), 8 M. & W. 616; *Hallifax v. Lyle* (1849), 3 Exch. 446.

**2019.** ——— Bankruptcy.]—*Assumpsit* by indorsee against acceptor of a bill of exchange drawn by B. Plea, that before the making of the bill, to wit, on, etc., a commission of bkpcy., under the Great Seal of Great Britain, was duly awarded against B. & C., then being traders & co-partners, under which they were duly declared & adjudged bkpts., that B. obtained his certificate under that commission, & was thereby discharged according to the laws concerning bkpts., that afterwards, & before the making of the bill of exchange, to wit, on, etc., B., being a trader subject to the bkpcy. laws, & indebted to O. in £100, became & was bkpt., & afterwards, to wit, on, etc., a certain other commission of bkpcy. was duly awarded against him on petition of O., under which he was duly adjudged & declared to be bkpt., & O. was duly chosen & appointed & became assignee of his estate & effects as such bkpt., that afterwards, to wit, on, etc., B. duly obtained his certificate under the last-mentioned commission, & that B.'s estate did not then or at any other time produce, after all charges, sufficient to pay the several creditors who had proved their debts under the last-mentioned commission 15s. in the pound, that by reason of the premises, the bill of exchange in the declaration mentioned, after the acceptance & delivery thereof by deft. to B., & before the indorsement thereof by B., became & was the property of O., as such assignee, & B. indorsed the bill without having any right, title, or authority so to do, & plff. was not the legal holder thereof:—*Held*: on special demurrer, the plea was bad, on the grounds that deft. was estopped, by his acceptance of the bill payable to B.'s order, from



saying that B. was incapable of transferring the bill by indorsement, & the plea ought, even if deft. could set up such a defence, to have set forth fully all the proceedings in the bkpcy.—*PITT v. CHAPPELOW* (1841), 8 M. & W. 616; 10 L. J. Ex. 487; 151 E. R. 1185.

*Annotations*:—*Consd. Sanderson v. Collman* (1842), 4 Man. & G. 209; *Braithwaite v. Gardiner* (1846), 8 Q. B. 473. *Appld. Smith v. Marsack* (1848), 6 C. B. 486.

.]—In an action by a *bonâ fide* indorsee against the acceptor of a bill of exchange payable to drawer's order, deft. is estopped from pleading that the drawer & first indorser was an uncertificated bkpt. when the acceptance was given.—*BRAITHWAITE v. GARDINER* (1846), 8 Q. B. 473; 15 L. J. Q. B. 187; 6 L. T. O. S. 367; 10 Jur. 591; 115 E. R. 954.

*Annotations*:—*Appld. Smith v. Marsack* (1848), 6 C. B. 486. *Refd. Ashpitel v. Bryan* (1863), 3 B. & S. 474.

**2021.** ——— **Married woman.**]—In an action by the holder against the acceptor of a bill of exchange payable to drawer's order, deft. pleaded that the drawer, at the time of drawing & indorsing the bill, was a married woman. Replication, that she drew & indorsed the bill by the authority & as the agent of her husband:—*Held*: such replication was no departure, inasmuch as it tended to strengthen the derivative title of the drawer, & to fortify the declaration.—*PRINCE v. BRUNATTE* (1835), 1 Bing. N. C. 435; 1 Scott, 342; 4 L. J. C. P. 90; 131 E. R. 1184.

*Refd. Lindus v. Bradwell* (1848), 5 C. B. 583; *Smith v. Marsack* (1848), 6 C. B. 486. *Mentd. Brine v. G. W. Ry. Co.* (1862), 2 B. & S. 402.

**2022.** ——— .]—To a count upon a bill of exchange payable to drawer's order by indorsee against acceptor, a plea that the drawer was a married woman at the time of the indorsement, & that her husband did not authorise or consent to her indorsement:—*Held*: bad, on the ground that deft. was not at liberty to deny the maker's power to indorse, after having, by his acceptance of the bill, asserted that she had the power in question.—*SMITH v. MARSACK* (1848), 6 C. B. 486; 6 Dow. & L. 363; 18 L. J. C. P. 65; 12 L. T. O. S. 217; 12 Jur. 1050; 136 E. R. 1338.

*Annotations*:—*Refd. Ashpitel v. Bryan* (1863), 3 B. & S. 474. *Mentd. Morris v. Walker* (1850), 15 Q. B. 471. *Unwin* (1881), 7 Q. B. D. 636.

**2023.** ——— **Corporation.**]—The acceptor of a bill of exchange, payable to the order of the drawer, cannot deny the authority of the drawer to draw or indorse such a bill.

To an action on a bill of exchange drawn by A. B. & Co., & payable to their order 12 months after date, & accepted by deft., & indorsed by A. B. & Co. to plffs., a plea, that A. & B. Co., before, & at, & since the time of the making & indorsing the bill, were & have been a body

corporate, by virtue of certain letters patent, & that the bill purported to be & was drawn by the body corporate, & as such accepted by deft., & not otherwise, & that the body corporate had not at any time any authority to indorse, issue, or negotiate any bill of exchange, or to transfer the right to receive payment thereof by indorsement, in the name of the co., or otherwise:—*Held*: bad.—*HALLIFAX v. LYLE* (1849), 3 Exch. 446; 154 E. R. 920; S. C. *sub nom. HALIFAX v. LYLE*, 6 Dow. & L. 424; 18 L. J. Ex. 197; 18 L. T. O. S. 8.

**2024.** ——— **Bill indorsed ultra vires by partner.**]—The acceptor of a bill of exchange drawn in the name of a firm, without the authority of one of its members, to the order of the firm, is not estopped from disputing the indorsement on the ground that the same member of the firm did not give his authority. *Semble*: if a bill is drawn by a non-mercantile partnership in the name of the firm, & to the order of the firm, the acceptor is estopped from denying that the members of the firm had the authority to draw & indorse bills possessed by the members of a mercantile partnership.—*GARLAND v. JACOMB* (1873), L. R. 8 Exch. 216; 28 L. T. 877; 21 W. R. 808, Ex. Ch.

**2025.** ——— **Validity of indorsement—Proof waived By asking for indulgence.**]—In an action by indorsee of a bill of exchange, where several indorsements have taken place, which are laid in the declaration, though necessary to be proved in general, yet, if deft. applies for time to the holder, & offers terms, it is an admission of the holder's title, & a waiver of proof of all the

of the first.—*BOSANQUET v. ANDERSON* 6 Esp. 43, N. P.

**2026.** ——— **By promise to pay.**]—In an action by indorsee against acceptor of a bill of exchange, the declaration stated, that the payee indorsed it, his own proper hand being thereunto subscribed. The payee's name upon the back of the bill was written, under his authority, by his wife: *Held*: deft. was not at liberty to object that the indorsement was not in the handwriting of the payee himself, after a promise, with a knowledge of that circumstance, to pay the bill.—*v. LOADER* (1810), 2 Camp. 450, N. P.

**2027.** ——— **Bill accepted after indorsement—Acceptor knowing indorser was infant.**]—In an action on a bill of exchange by indorsee against acceptors, where the payee & first indorser was an infant, the jury having found a verdict for plff., on evidence that defts. knew, when they accepted it, that the payee was an infant, & that he had, in fact, indorsed the bill before they accepted it, the ct., in those circumstances, it appearing also that defts. had been in the practice of raising money on bills, refused to disturb the verdict by

# PART XIII. SECT. 2, SUB-SECT 2

2021 i. Bill payable to drawer's

at acceptor of a bill of e. deft. pleaded that the bill had & indorsed by a married woman. the point, that as it face of the made pay- to the order of the drawer, deft. ring the the drawer to indorse:— when a

e to the of the drawer, he of the drawer to make the , & his capability to it.— Ir. Jur. 368.—IR.

being desired to from plffs. to a an overdraft deft., a director, gave his the co., payable to the co. or its order, & the note was indorsed by two directors & the manager, & seal of the co. In an action by

of the note, KIA 1 V. L. R. 47.—AUS.

2027 i. — Valid bill accepted after indraft was drawn in a name,

Held: & was of the co. from disputing the

## 304 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

*Sect. 2.—Liability of acceptor: Sub-sect. 2. Sect. 3: Sub-sect. 1.]*

granting a new trial, applied for on the grounds of the legal objection, that an infant could not, by his indorsement, give currency to a bill of exchange, but they refrained from giving any opinion on the effect of it, if brought before them on a case more free from imputation.—*JONES v. DARCH* (1817), 4 Price, 300, 146 E. R. 471.

—*Reid. Pitt v. Chappelow* (1841), 8 M. & W. 616.

By procuration—Course of dealing.]—Where a bill is drawn by procuration, & it appears to have been the course of dealing in the business of the drawer, that bills were drawn, accepted, & indorsed by that procuration, the acceptor of a bill so drawn, & payable to drawer's order, binds himself to pay upon an indorsement by the same procuration.—*JONES v. TURNOUR* (1830), 4 C. & P. 201; L. & Welsb. 318; 8 L. J. O. S. K. B. 173.

Signature by procuration generally, see Part IX., Sect. 4, *ante*.

2029. Defendant estopped by his own agreement.]—C., who had been managing clerk to B., a deceased merchant, sold a part of B.'s personal estate to deft., with the consent of A., who claimed an interest therein, & by agreement between A., C., & deft., C., in the name of B., drew a bill of exchange for the price on deft., & in the like name indorsed it to A., who retained it till his death. Deft. accepted the bill after it had been so indorsed. After A.'s death, A.'s exor. put the bill in suit against deft., declaring on it as on a bill drawn & indorsed by B. The plea denied the indorsement by B.;—*Held*: in the circumstances deft. was by his own agreement estopped from denying that the bill was indorsed as alleged.—*ASHPITEL v. BRYAN* (1864), 5 B. & S. 723; 11 L. T. 221; 122 E. R. 909; S. C. *sub nom.* *ASPITEL v. BRYAN*, 33 L. J. Q. B. 328; 12 W. R. 1082, Ex. Ch.; *affg.* (1863), 3 B. & S. 474.

*Annotations*:—*Distd. Brook v. Hook* (1871), L. R. 6 Exch. 89. *Consd. Vagliano v. Bank of England* (1889), 23 Q. B. D. 243. *Reid. Garland v. Jacomb* (1873), L. R. 8 Exch. 216. *Mentd. McCance v. L. & N. W. Ry. Co.*, 34 L. J. Ex. 39.

2030. Existence of drawer—Proof of validity of indorsement.]—By accepting a bill payable to the drawer's order, drawn & indorsed in a fictitious name, the drawee undertakes to pay to the signature of the same person as indorser, who signed as drawer.

The indorsee of such a bill suing the acceptor, may, by comparison of the signatures, show that the drawing & the indorsement are in the same handwriting.

The acceptor of a bill is bound, & must be presumed, to know the handwriting of the drawer, &

is consequently precluded from disputing it. But, he may dispute the indorsement, where the drawer is a real person; but where there is in reality no such person as the drawer, the fair & proper construction of the acceptor's undertaking is, that he will pay to the signature as indorser, of the same person who signed as drawer (*LORD TENTERDEN, C.J.*).—*COOPER v. MEYER* (1830), 10 B. & C. 468; L. & Welsb. 172; 5 Man. & Ry. K. B. 387; 8 L. J. O. S. K. B. 171; 109 E. R. 525.

—*Appld. Beeman v. Duck* (1843), 11 M. & W. 251. *Consd. London & South Western Bank v. Wentworth* (1880), 5 Ex. D. 96; *Bank of England v. Vagliano*, [1891] A. C. 107. *Reid. Schultz v. Astley* (1836), 2 Bing. N. C. 544; *Ashpitel v. Bryan* (1863), 3 B. & S. 474; *Phillips v. Im Thurm* (1866), Har. & Ruth 499.

See, also, cases in Part II., Sect. 1, sub-sect. 5, *ante*.

2031. Bill payable to "our" order—Signed in name of two persons & co.—Firm consisting of one person.]—A bill of exchange, drawn in the following form: "Pay to our order," etc., signed in the name of two persons & Co., & accepted by deft., may be declared upon by the indorseees as a bill drawn by an aggregate firm, & if it be proved that the firm consists of only one person, yet it is not a variance.—*BASS v. CLIVE* (1815), 4 M. & S. 13; 105 E. R. 740.

2032. Bill payable to order of third person—Existence of payee—Fictitious payee.]—Where a bill made payable to a fictitious person to the knowledge of the acceptor is indorsed by the drawer, the acceptor cannot object to the holder's title, on the ground that the indorsement is fictitious.—*STONE v. FREELAND* (1769), 1 Hy. Bl. 316, n.; 126 E. R. 187, N. P.

*Annotations*:—*Consd. Gibson v. Minot* (1791), 1 Hy. Bl. 569. *Reid. Master v. Miller* (1791), 4 Term Rep. 320; *Bank of v. Vagliano*, [1891] A. C. 107.

2033. Capacity to indorse—Married woman.]

If a promissory note is made payable to a married woman, & she indorses it for value in her own name, & the maker afterwards promises to pay it, in an action against him by the indorsee, it will be presumed, that the nominal payee had authority from her husband to indorse the note in that form, & the indorsement will be considered as vesting a legal title to the note in pltf.—*COTES v. DAVIS* (1808), 1 Camp. 485.

*Folld. Prestwick v. Marshall* (1831), 7 Bing. Prince v. Brunnate (1835), 1 Bing. N. C. 435. *Appld. v. Bradwell* (1848), 5 C. B. 583. *Consd. Smith v. C. B.* 486. *Reid. Scarpellini v. Atcheson* 7 Q. B. 864.

2034. Bankruptcy.]—Where a debtor of an uncertificated bkpt. made a promissory note payable to bkpt., "or his order" in discharge of a debt, contracted before bkpcy., & bkpt. indorsed it for a *bond fide* debt to A., who indorsed it to B.

from denying their signatures as in- even though it was on the bill line of acceptance & payment.—*K OF MONTREAL* (1887), O. R. 39; 14 A. R. 333.—CAN.

2032 I. Bill payable to order of third person.—Existence of payee—Disolved firm.]—*Semble*: If the maker of a promissory note in favour of a firm already dissolved knows of the dissolution at the time of making the note, he cannot afterwards avail himself of the prior dissolution of the firm as a defence to an action on the note.—*PARKINSON v. HUGHES* (1871), 2 V. (Law) 146.—AUS.

k. Identity of (if not owner at) a pltf., who proceeding on mory note cannot con with pltf. the right ning the payn of it, even if blish that the r was not the of the at the moment of the of if

—*MCKINNON* S. 34.—CAN.

2034 I. Capacity to indorse.—*Insolvency*.]—A declaration on a bill of exchange stated that F. drew the bill on May 13, directed to deft. requesting

to pay to B., or order, \$800 on 1 then next, that deft. accepted bill, that B. indorsed it to E., who rved it to pltf. Deft. pleaded that subsequent to the acceptance of the bill, & prior to the alleged indorsement by B., the latter became insolvent, & a writ of attachment was his estate, whereby the bill of became vested in his a the alleged indorsement without the knowledge or consent of . Pltf. demurred to the on the ground that by accepting the bill from disputing B.'s :—*Held*: the



for valuable consideration, & B. sued the maker :—*Held*: the maker, by the terms of his note, was estopped from saying that bkpt. had no authority to indorse.—*DRAYTON v. DALE* (1823), 2 B. & C. 293; 3 Dow. & Ry. K. B. 534; 2 L. J. O. S. K. B. 20; 107 E. R. 393.

—*Consol. Sanderson v. Collman* (1842), 3 Man. & G. 209. *Apud. Smith v. Marwick* (1848), 8 C. B. 111; *Chappelow* (1841), 8 M. & W. 616; *r. Duhamel* (1845), 1 C. B. 888; *Hallifax v. Lyle* (1849), 3 Exch. 446; *Ashpittel v. Bryan* H. & N. 474; *Vagliano v. Bank of England* (1889), Q. B. D. 343. *Mentd. Gwynne v. Burnell* (1840), 6 Bing. N. C. 453; *Herbert v. Sayer* (1844), 3 Q. B. 965.

**2035. — Genuineness of indorsement.—Indorsement on bill at time of acceptance.**—Actual proof that the name of an indorser is in his handwriting is not necessary, where admissions to this effect may be implied, *e.g.*, from the facts that, at the time of the acceptance, the name of such indorser was upon the bill & that the acceptor had promised to pay it.—*HANKEY v. WILSON* (1755), Say. 223; 96 E. R. 860.

**2036. —**—In an action against the acceptor of a bill of exchange, it is necessary to prove the handwriting of the first indorser, notwithstanding such indorsement was on the bill at the time it was accepted.—*SMITH v. CHESTER* (1787), 1 Term Rep. 654; 90 E. R. 1303.

*Annotations:—Apud. Robinson v. Yarrow* (1817), 1 Moore C. P. 150. *Reid. London & South Western* (1880), 5 Ex. D. 96.

**2037. —**—Action by against acceptor of a bill of exchange, payable to H. & M. The bill had been indorsed by H. in the name of himself & M., & deft. had accepted it with that indorsement upon it. The defence was, that the payees were not partners, & that the bill ought to have been indorsed by both :—*Held*: deft. having accepted the bill indorsed by one for himself the other, could not dispute the regularity of the indorsement. *v.* (1806), 1 Camp. 83, n., N. P.

**2038. —**—To an action upon a bill of exchange purporting to be drawn by A. payable to the order of B., & to have been indorsed by B. to C., & by C. to plff., deft., who had accepted the bill for the honour of A., besides traversing the indorsements by B. & C., pleaded that, when the bill was made, there was no such person as B., the supposed payee, but that his name was merely fictitious, whereof he, deft., at the time of his acceptance of the bill had no notice or knowledge. The ct. declined to allow plff. to reply that the names of B. & C. were already on the bill when deft. accepted it, & that he was estopped from denying that they were real indorsers, as the matter was admissible under the traverse of the —*PHILLIPS v. IM THURN* (1865), 18

C. B. N. S. 400; 144 E. R. 500; (1866), L. R. 1 C. P. 463.

of

Acceptance for honour generally, see Part XV. post.

**2039. —**—In an action by against acceptor of a bill of exchange, drawn payable to "A. or order," it is competent to deft. to give evidence that the person who indorsed to plff. was not the real payee, though he be of the same name, & though there be no addition to the name of the payee on the bill.—*MEAD v. YOUNG* (1790), 4 Term Rep. 28; 100 E. R. 876.

*Annotations:—Apud. Bulkeley v. Butler* (1824), 2 B. & C. 434. *Reid. Bank of England v. Vagliano*, [1891] A. C. 107. *Mentd. R. v. White* (1847), 2 Cr. & Kl. 404.

**2040. Bill accepted in blank.—Genuineness of drawing & indorsement.**—When a bill is accepted in blank for the purpose of being negotiated, & afterwards filled in with the name & signature of a person as drawer & indorser, the acceptor cannot, as against a *bond fide* indorsee for value, adduce evidence to show that either the drawing or indorsement is a forgery.—*LONDON & SOUTH WESTERN BANK v. WENTWORTH* (1880), 5 Ex. D. 96; 49 L. J. Q. B. 657; 42 L. T. 188; 28 W. R.

A. C. 514; *Smith v. Prosser*, [1907] 2 K. B. 735. *Herdman v. Wheeler*, [1909] 1 K. B. 361.

**2041. Negotiability of instrument.—Validity of indorsement.—Foreign law.**—Bills of exchange, were drawn in France by a domiciled Frenchman in the French language, in English form, on an co., who duly accepted them. The drawer indorsed the bills & sent them to an Englishman in England :—*Held*: the acceptor could not dispute the negotiability of the bills by of the indorsements being invalid, to French law.—*Re MARSEILLES EXTENSION Ry. LAND CO., SMALLPAGE & BRANDON'S* (1885), 30 Ch. D. 598; 55 L. J. Ch. 116; 1 T. L. R. 527.

*Annotations:—Reid. Embiricos v. Anglo-Austrian Bank*, [1905] 1 K. B. 677. *Mentd. Re London Metallurgical Co* 1 Ch. 758; *Re Bankes*, r. Ch.

### SECT. 3.—LIABILITY OF DRAWER.

#### SUB-SECT. 1.—IN GENERAL.

Act, s.

#### 2042. Promise to pay.—If drawee defaults.]

A declaration against the drawer is good, without laying an express promise, as the drawing of the bill is an actual promise.—*STANKE v*

was *SON* (1880), 20 N. B. R. 338.—*CAN.*

**2034 II. —**—A. made a note & indorsed it to C., who assigned his property to a trustee, who transferred the note to X. Before the transfer C. became bkpt. in England. X. sued A. on the note :—*Held*: A. was not entitled to an injunction if he could set up as a defence to the

C.'s trustee in bkpy. was the note as a part of C.'s *BERT v. CAMPBELL* (1862), N. B. (1).—*CAN.*

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farmers to plain the DART v. QUAD (1907), 9 O. W. R. 714.

m. Validity of award.—Action on bill for part of sum awarded.—Where, upon the face of an award, the arbitrators have not stated anything which that the

awarded is deft., in an action upon a bill for part of the sum awarded, to peach the award on *v. STEWART* V. L. R. 75.—*AUS.*

e. Genuineness of an action against def. draft drawn by K., & deft. pleaded denying —*Held*: the defence struck out, it being shown to —*CAMPBELL v. MCKAY* (1892), N. S. R. 404.—*CAN.*

3. of drawer: 1

(1699), Carth. 509; 1 Ld. Raym. 538, 1 Salk. 128; 91 E. R.

—*Fold*. Griffith v. Roxbrough (1837), 2 M. & W. 734. *Consol*. Henry v. Burbridge (1837), 5 Dowl. 484. *Reid*. Wengersloffe v. Keene (1719), 1 Stra. 214; Morris v. Norfolk (1808), 1 Taunt. 212. *Mentd*. Sinclair v. Brangham, (1914) A. C.

**2043.** — **Effect of indorsing.**—Indorsement by the drawer does not give him a new character as indorser, or divest him of any liability to which, as maker of the bill, he would have been subject.—*STRATTON v. HILL* (1817), 3 Price, 253; 2 Chit. 126; 148 E. R. 253.

—*Consol*. Priddy v. Hembrey (1823), 1 B. & C. 674. *Fold*. Watkins v. Wake (1841), 7 M. & W. 488.

**2044.** — **If acceptor defaults.**—A count in *umpsit* by indorsee against drawer of a bill of exchange for default of payment, is bad on special demurrer, if it contain no allegation of a promise to pay by debt.

In this action against the drawer the bill is not a debt, but causes by implication of law a promise to pay if the acceptor fails to do so, which promise should be alleged in the declaration (*TINDAL, C.J.*).—*HENRY v. BURBRIDGE* (1837), 3 Bing. N. C. 501; 5 Dowl. 484; 3 Hodg. 16; 4 Scott, 296; 6 L. J. C. P. 110; 1 Jur. 215; 132 E. R. 503.

—*Consol*. Griffith v. Roxbrough (1837), 2 M. & W. 734; *Stericker v. Barker* (1842), 9 M. & W. 321.

**2045.** — **With lawful interest.**—The contract, which a drawer of a bill of exchange enters into by that instrument is, that in consideration that the payee will give time for payment, the drawee will pay the sum at the expiration of that time, & that if the latter does not do so, the drawer will, upon notice of the default given by the holder, pay the amount with, where no rate of interest is specified, lawful interest.—*GIRNS v. FREMONT* (1853), 9 Exch. 25; 22 L. J. Ex. 302; 21 L. T. O. S. 230; 17 Jur. 820; 1 W. R. 482; 1 C. L. R. 675; 150 E. R. 11.

*Annotations*:—*Consol*. Rouquette v. Overmann (1875), L. R. 10 Q. B. 325. *Reid*. Keene v. Keene (1857), 3 C. B. N. S. 144. *Mentd*. Sharpley v. Rickard (1857), 2 H. & N. 57; *Brantley v. S. E. Ry. Co.* (1862), 12 C. B. N. S. 63; *Scott v. Seymour* (1862), 1 H. & C. 219; *Horne v. Rouquette* (1878), 3 Q. B. D. 514; *of South Australia* (1887), 36 Ch. D.

**PART XIII. SECT. 3, SUB-SECT. 1.**

**2044 i.** *Promise to pay*—If acceptor defaults.)—Immediately on failure of payment of a draft at sight, whatever state of the account drawer & drawee, the liable to the payee for the amount which would place him at the stipulated time & place in the if the money had been  
—*SUNTH KAHANDAS NARAH*—*IND*. (1879), 1 L. R. 3

a suit on

lurty.  
two partners of the firm that rew the bundi. & also the

L. passing

it & the a bundi was not in

select any one or more of them.—*BASANT RAM v. KOJANAL* (1877), 1 L. R. 1 All. 399.—*IND*.

**2044 iii.**

re against drawer of a bill of exchange drawn by S., the defence was that by a deed of Aug. 1865, made under Bkpy. Act, 1861 (c. 124), all the property of S. was conveyed upon trust to distribute among his creditors, & the creditors were to be at liberty to sue sureties. The bill was not due till

of the *Plff.*  
upon it. A verdict having for him,

**2044 iv.** — *Death before presentment.*—The drawer of a bill undertakes that a drawee shall honour it, & if he dies before presentment, the liability is transferred to his representatives, & by 34 Geo. 3, c. 15, the holder may sue either the executor, or the heir.—*HOLT v. ASHOTT* (1861), 1 Legge, 681.—*AUS*.

acceptor's creditors.)—Where

**2046.** To indorsee—Money had & received—Money given by acceptor to drawer to take up bill.]—A few days before a bill of exchange became due, the acceptor informed the drawer that he would be unable to pay it, & said the drawer must take it up, & gave him part of the amount to assist him in doing so. The drawer received the money & promised to take up the bill:—*Held*: the sum paid to the drawer by the acceptor was money had & received to plff.'s use.—*BAKER v. BIRCH* (1811), 3 Camp. 107, N. P.

*Annotations*:—*Reid*. Pickin v. Graham (1833), 1 Cr. & M. 725; *Re Brereton, Ex p. Bignold* (1836), 3 Mont. & A. 633; *Houlditch v. Canty* (1838), 4 Bing. N. C. 411. *Mentd*. Singer v. Elliott (1887), 4 T. L. R.

**2047.** To person paying in error—Bill made payable at house of C.—Presented to & paid by C. in error.]—A. drew a bill on B. in the country, making it payable at the house of C. in London, without authority from C. B. accepted the bill in that form, without giving notice to C., or providing for the payment of the bill at C.'s house. A. negotiated the bill, which, upon becoming due, was presented by the holder to C., who paid it under the supposition that the bill so presented was another bill of a different amount & date, drawn by B. on & accepted by himself, & did not discover his mistake until a fortnight afterwards, when the other bill was presented. B. became bkpt.:—*Held*: C. could not recover against A., in an action for money had & received. *Semble*: if A. himself had received payment as holder of the bill, for his misconduct in making the bill payable at C.'s house he would have been liable.—*DAVIES v. WATSON* (1833), 2 Nev. & M. K. B. 709; 2 L. J. K. B. 175.

**2048.** To transferee without indorsement—Action of debt.]—Where the drawer of a bill indorses it in blank, & delivers it to A., who passes it without a fresh indorsement to B., B. cannot maintain an action of debt on it against the drawer.—*LEWIN v. EDWARDS* (1842), 9 M. & W. 720; 1 Dowl. N. S. 639; 11 L. J. Ex. 291; 6 Jur. 401; 152 E. R. 304.

*Annotations*:—*Fold*. Burmester v. Hogarth (1843), 11 M. & W. 97. *Distd*. Keene v. Beard (1860), 8 C. B. N. S. 372. *Mentd*. Atkinson v. Davies (1843), 11 M. & W. 236; *R. v. O'Connell* (1844), 5 State Tr. N. S. 1.

**2049.** To pay after receiving notice of dishonour Reasonable time.]—The drawer of a bill is only

a cognovit, & the ment entered on such confession had been set aside as against the executor. —*Held*: the judgment should not be set aside as against the drawer, who had joined in the confession so given.—*COMMERCIAL BANK OF CANADA v. WOODHUFF* (1862), 21 U. C. R. CAN.

vi.  
*Barred by limitation.*—The fact that the acceptor of a bill is not was joined as a party to the suit after the period of limitation had expired, does not discharge the drawer from his liability, where the suit has been instituted as against him in time.  
—*RAM*  
*v. SUNDARARAJA CHETTI* (1902), 1 L. R. Mad. 239.—*IND*.

v. — *Not affected by holder bringing one action against all parties liable.*—C. S. U. C. c. 42, which permits the holder of a note or bill to sue all parties liable upon it in one action, does not affect the rights & liabilities of debtors as between themselves, but leaves them as if they had been



bound to pay within reasonable time, after receiving notice of its being dishonoured, & when he received notice the day after the bill became due:—*Held*: a tender on the following day was in time.—*WALKER v. BARNES* (1813), 5 Taunt. 240; 1 Marsh. 36; 128 E. R. 681.

370. *Mentd. Murray v. East India Co.* (1821), 5 B. & Ald.

On bill drawn by agent or person in representative capacity.]—See Part IX., Sect. 5, *ante*.

When indorser liable as drawer.]—See Sect. 4,

2050. *Cheque — To indorsee — Money paid to payee.*—*Semble*: the holder of a cheque, who has given cash for it to the payee, cannot maintain an action against the maker for money paid to his use.—*SEARLE v. NORTON* (1842), 9 M. & W. 309; 152 E. R. 131; S. C. *sub nom.* *SEARLE v. NORTON*, 11 L. J. Ex. 212.

2051. ——— *To payee.*—Debt lies against the maker of a cheque by the payee, to whom he has delivered it.

A declaration upon a cheque, payable to *plff.* or bearer, after stating that *deft.* was summoned in an action of debt, averred that *deft.* made the cheque, & delivered it to *plff.*, who still was the bearer of it, that it was presented & not paid, & "that in consideration of the premises, *deft.* promised *plff.*" to pay him the amount, etc., upon

It then contained counts for goods sold & delivered, & upon an account stated, & concluded, that "by reason of the non-payment of the several moneys, an action had accrued," etc.:—*Held*: the first count was a good count in debt, as the allegation of the promise might be rejected as surplusage.—*SIMPKINS v. POTHECARY* (1850), 5 Exch. 253; 1 L. M. & P. 240; 19 L. J. Ex. 242; 15 L. T. O. S. 93; 14 Jur. 464; 155 E. R. 108.

2052. ——— *To third person.*—Duty to stop payment.]—The drawer of a post-dated cheque given for value is under no obligation to stop its payment before its date for the benefit of a third person.

If, before the date of payment, the drawer ——— notice of an adjudication of *bkpcy.*, made against the payee since the delivery of the cheque to him upon an act of *bkpcy.* committed by him before the delivery, he is not bound, for the benefit of *bkpt.*'s creditors, to give notice to his bankers not to pay the cheque, & thus expose himself to the risk of an action by a *bond fide* holder of the cheque for value. If the cheque was originally delivered by the drawer to the payee, in good faith & for value, & without notice of an act of *bkpcy.* previously committed by the payee, on which an adjudication is subsequently made, the

is protected by *Bkpcy. Act*, 1869 (c. 71), s. 94 (3) & the trustee in the *bkpcy.* cannot recover the amount of the cheque from the drawer.—*Re PALMER, Ex p. RICHDALE* (1882), 19 Ch. D. 409; 51 L. J. Ch. 462; 46 L. T. 116; 30 W. R. C. A.

—*Held*. *Bence v. Shearman*  
Royal B  
713; *Gordon v. London City &*  
Gordon L. B.

#### SUB-SECT. 2.—ESTOPPEL OF DRAWER.

1882 Act, s. 55 (1) (b).

2053. *Against whom estopped—Only holder in due course—Blank instrument wrongly filled up.*—*Plff.*, a stockbroker, employed a confidential clerk. On settling days on the Stock Exchange, it was *plff.*'s practice to sign a number of blank cheques & to hand them over to the clerk, giving him authority to fill in the names of persons, with whom *plff.* did business & whose accounts he wished to settle, & the amount of the sums due to them. The authority of the clerk was absolutely limited to that. The clerk had entered into betting transactions with *deft.*, & had incurred debts. To pay those debts he wrongfully filled in seven of the blank cheques with the name of *deft.*, who took them in good faith, & certain sums which he owed them from time to time. *Plff.* sued *deft.* for damages for the conversion of the cheques & their proceeds:—*Held*: *plff.* entitled to recover, & when the holder of a instrument was not a holder for value, drawer of the instrument was not estopped from saying as against such holder that the body of the instrument had been wrongly filled up.—*PAINE v. BEVAN & BEVAN* (1914), 110 L. T. 933; 30 T. L. R. 395.

2054. *Capacity of payee to indorse.*—The infancy of the payee is no answer, in an action by the indorsee of a bill of exchange against the drawer.—*GREY v. COOPER* (1782), 3 Doug. K. B. E. R. 541.

2055. *That instrument is bill—Bill drawn by one branch on another branch of same company.*—Where an instrument, purporting to be a bill of exchange, is drawn by one branch of a mercantile house upon another branch of the same house, the drawer is estopped from denying that it is a bill of exchange.—*WILLANS v. AYERS* (1877), 3 App. Cas. 133; 47 L. J. P. C. 1; 37 L. T. 732, P. C.

36 (Ch. D. 522.

of

Fictitious payee.]—See Part II., Sect. 1,

(1859).

To

was drawn upon a

of

of those persons:—*Held*:  
of persons who drew the  
liable to the bank jointly  
& not pro rata.—*BRIDGES*  
v. WALLACE &  
(1902), 10 E. L. T.

c. ——— *Pleading.*—In an action for non-payment of a cheque, a count alleged the drawing of a cheque, payable to O., that the cheque was delivered to O. in payment of a debt due to O. from *plff.*, & O. being the lawful holder of the cheque, & entitled to receive the amount thereof, duly presented, etc. A plea, that the cheque was not delivered to O. in payment of a debt:—*Held*: bad.—*TODD v. UNION BANK OF LOWER CANADA* (1864), 1 Man. L. R. 119.—CAN.

#### PART XIII. SECT. 3, SUB-SECT. 2.

c. *Indorsement of bill.*—A bill indorsed to a bank was sued on by the bank, & judgment recovered against *plff.*, the acceptor, who thereupon sought to recover the amount from the drawer:—*Held*: by failing to deny the paragraphs of the statement of claim alleging the indorsement of the bill to the bank, *deft.* was estopped from alleging that the bill was not indorsed to the bank.—*SEELY v.* (1896), 28 N. S. R. 210.—CAN.

**4.—LIABILITY OF****SUB-SECT. 1.—IN GENERAL***regards Bills of Exchange and Cheques.*

1882 Act, s. 55 (2) (a).

**2056. To immediate indorsee.**—Debt is maintainable on a bill of exchange by indorsee against his immediate indorser.

The act of indorsement is an admission of a debt due from indorser to his indorsee, & also implies a conditional promise to pay that debt, if the acceptor do not, & upon having due notice of the dishonour of the bill (PARKE, B.).—WATKINS v. WAKE (1841), 7 M. & W. 488; H. & W. 78; 9 Dowl. 242; 10 L. J. Ex. 135; 151 E. R. 858.

*Annotation*—Mentd. Powell v. Ancell (1841), 3 Man. & G. 171.

**2057. ———.**—The liability of an indorser to his immediate indorsee arises out of a contract between them, & this contract in no case consists exclusively in the writing popularly called an indorsement, which is necessary to the existence of the contract in question, but arises out of the written indorsement itself, the delivery of the bill to the indorsee, & the intention with which that delivery was made & accepted, as evinced by the words, either spoken or written, by the parties, & the circumstances, such as the usage of the place, & the course of dealing between the parties under which the delivery takes place.—CASTRIQUE v. BUTTIGIEG (1856), 10 Moo. P. C. C. 94; 27 L. T. O. S. 111; 4 W. R. 445; 14 E. R. 427, P. C.

*Expd.* Abrey v. Crux (1869), L. R. 5 C. P. 37.

**2058. To holder.**—The contract, which a party transferring for value the property in a bill of exchange makes with the transferee, is that he warrants that the bill, having been accepted by the drawee, shall, on being presented at the time it becomes due, be paid, that is, he engages as surety for the due performance by the acceptor of the obligations which the latter takes upon himself by the acceptance. The liability of the transferor is to be measured by that of the acceptor, whose surety he is, & as the obligations of the

acceptor are to be determined by the *lex loci* of performance, so also must be the obligations of the surety.—ROUQUETTE v. OVERMANN (1875), L. R. 10 Q. B. 525; 44 L. J. Q. B. 221; 33 L. T. 420.

*Annotations*—*Apld.* Re Francke & Rasch, [1918] 1 Ch. 470. *Reid.* Casanova v. Meier (1885), 1 T. L. R. 213.

**2059. ——— Surety for payment.**—The indorser of a bill of exchange is a surety for payment to the holder.—DUNCAN, FOX & Co. v. NORTH & SOUTH WALES BANK (1880), 6 App. Cas. 1; 50 L. J. Ch. 355; 43 L. T. 706; 29 W. R. 763, H. L.

*Annotations*—*Reid.* Aga Ahmed Ispahany v. Crisp (1891), 8 T. L. R. 132; Jowitt v. Union Cold Storage Co., [1913] 3 K. B. 1. *Mentd.* Forbes v. Jackson (1882), 19 Ch. D. 615; Nicholas v. Ridley, [1904] 1 Ch. 192.

**2060. To subsequent indorser.**—The liabilities *inter se* of successive indorsers of a bill must, in the absence of all evidence to the contrary, be determined according to the ordinary principles of the law merchant, whereby a prior indorser must indemnify a subsequent one.—MACDONALD v. WHITFIELD (1883), 8 App. Cas. 733; 52 L. J. P. C. 70; 49 L. T. 446; 32 W. R. 730, P. C.

*Mentd.* Wolmershausen v. Gullick, [1893] 2 Ch. 514; Godsell v. Lloyd (1911), 27 T. L. R. 383.

**2061. Demand on drawer unnecessary.**—No demand need be made on the drawer to entitle an indorser to his action.—LAKE v. HALES (1736), West temp. Hard. 7; 1 Atk. 281; 25 E. R. 791, L. C.

**2062. ———.**—In an action by indorsee against indorser of an inland bill of exchange, a demand on the drawer need not be shown.—HEYLIN v. ADAMSON (1758), 2 Keny. 379; 2 Burr. 669; 97 E. R. 503.

*Annotations*—*Mentd.* Blesard v. Hirst (1770), 5 Burr. 2670; Brown v. Harraden (1791), 4 Term Rep. 148; Mullman v. D'Eguino (1795), 2 Hy. Bl. 565; Ballingall v. Gloster (1803), 3 East, 481; Rowe v. Young (1820), 2 Bl. 391.

Necessity for presentment generally, see Part XII., Sect. 2, sub-sect. 1, *ante*.

**2063. As drawer.**—*Qu.*: whether the indorser of a bill can be sued as drawer.—GWINNELL v. (1836), 5 Ad. & El. 436; 2 Har. & W.

**PART XIII. SECT. 4, SUB-SECT. 1.**

**2064. To holder.**—The indorser, drawer of a bill, is liable to the

U. C. R. 414.—CAN.

of ——— bill &

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drawer & acceptor is illegal.—HANK OF

**2065 III.**

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It to plff. for value:  
deft. was liable upon

—ARNOLD v. 1 Man. L. R. 81.—CAN

—The indorser of a is liable for the contents to the but it is competent for the to prove that he signed his *autmo indorced*.—MAC- v. UNION BANK OF SCOTLAND RANKIN (1884), 38 So. Jur. 477; of Sess.) 963.—SCOT.

a. To drawer

of prior in- of a bill guarantees the in- the preceding indorser, is not responsible to the drawer who ended it for another, if the came into possession of in a legitimate manner, but error of the drawer.—AMERICAN EX- 18

party to a bill or note has his

to each other in the order of documents. The obligation as in- the

joint, whether the made for or for value an agreement

different from that indorsements.—McRAE (1899), Q. R. 16 S. C. CAN.

II. ———.—The rule as to the *inter se* of successive indorsers of a bill or note, in the absence of all evidence to the contrary, is that a prior indorser must indemnify a subsequent one.—WICKWIRE & WICKWIRE v. PASSAGE & TOMLIN (1914), C. R. 485.—

**2066 III.** ——— Agreement to vary order of liability.—Although it is the rule that the responsibility of indorsers of a negotiable instrument is according to the order of their indorsement, this rule is not invariable, & it may be shown by ordinary proof that the in- curred in such order by

or the (their liability would not follow the of in R.

CAN.

), 6 L. N. 3



194; 6 Nev. & M. K. B. 723; 111 E. R. 1231;

*L. GUINNELL v. HERBERT*, 5 L. J. K. B. 250.

*Consol. Steele v. McKinlay* (1880), 5 L.

*Montl. Jackson v. Slipper* (1868), 19 L. T.

**2064.** ——.]—A declaration alleged that deft. made his bill of exchange, & directed same to J., & required him to pay to deft.'s order £187 15s., & then indorsed the bill to plffs. The bill had been drawn by F., & indorsed by deft. in blank, & having been delivered by deft. to F., was by him taken to a bank of which plffs. were the managers, where it was received by them in renewal of another bill discounted by them, & drawn & indorsed by the same parties:—*Held*: (1) proof of deft.'s being the indorser of the bill did not support the averment that he made the bill; (2) assuming an indorser might be treated as a drawer, still the present indorsement, being in blank, was equivalent to the drawing of a new bill payable to bearer, & the bill was misdescribed in the declaration; (3) plffs. were not entitled to recover on the account stated.—*BURNESTER v. HOGARTH* (1843), 11 M. & W. 97; 12 L. J. Ex. 178; 152 E. R. 730.

*Matthews v. Bloxsome* (1864), 4 New

**2065. Is new drawer.**—Every indorser of a bill of exchange is a new drawer.—*LAKE v. HALEN* (1736), West temp. Hard. 7; 1 Atk. 281; 25 E. R. 791, L. C.

**2066.** ——.]—A bill of exchange was indorsed specially to plffs. by the payee. Next after the special indorsement, & before any indorsement by plffs., deft. indorsed it. Lastly followed plff.'s indorsement:—*Held*: deft.'s indorsement operated, not as a transfer of the property in the original bill, but as a new drawing by deft., who became liable to an action on the bill at suit of plff., without any necessity for a fresh stamp.—*PENNY v. INNER* (1834), 1 Cr. M. & R. 439; 5 Tyr. 107; 4 L. J. Ex. 12; 149 E. R. 1152.

*Consol. Guinness v. Herbert* (1836), 5 Ad. & El.

*Matthews v. Bloxsome* (1864), 4 New Rep.

*Steele v. McKinlay* (1880), 5 App. Cas. 734;

*Macdonald v. Whitfield* (1883), 8 App. Cas. 733;

*r. Taylor* (1865), 34 L. J. C. P.

*Is new drawer.*—An indorser of a bill is in the nature of a new drawer, & is liable to the holder in default of or payment by the drawer, indorser cannot be absolved from liability because the drawer was operated or not impleaded.—*DAR v. MEHUN SINGH* (1866), 1 Ind. 182.—IND.

against third indorser of a bill:—*Held*: final judgment in a previous on the same bill, in which all parties thereon were sued & served, but in which the special indorsement & judgment only showed a cause of the drawer &

against the indorser.—*BANK OF UPPER CANADA v. LEXAN* (1861), 11 C. P. 174.—CAN.

Where a cheque was by on their a bill to the tenor or bill 13 L. C. J. 212.—CAN.

b. a firm of two or more in the partnership name, the

sureties is a joint y, & not of

Gr. 269.—CAN.

all by in C. 42, holder of a or bill to sue all parties it in one action, does not rights & liabilities of

as if they had been

Gr.

#### PART XIII. SECT. 4, SUB-SECT. 1.

To first indorser.—The first has no recourse against

for that

liability from that which to the ordinary

of law. Q. R. 17 S. C. 94.—CAN.

In an action by the who put his name on it as a surety for the maker:—*Held*: plff. could not to the note subsequent to

**2067.** ——.]—To an action against deft. as indorser of a bill of exchange, he pleaded that "he did not make or draw the bill of exchange as in the declaration alleged":—*Held*: plff. was not entitled to treat the plea as a nullity, & sign judgment as for want of a plea.

Every indorser is in law a new drawer (*PARKE, B.*)—*ALLEN v. WALKER* (1837), 2 M. & W. 317; 5 Dowl. 460; Murp. & H. 44; 6 L. J. Ex. 78; 1 Jur. 57; 150 E. R. 778.

*Distd. Kelly v. Villebois* (1839), 3 Jur. 1172.

**2068.** ——.]—Every indorser of a bill of is a new drawer.

Any person putting his name on the back of a bill in which he has no interest may be sued as drawer, but not as indorser, & may be so sued by the actual drawer, being the rightful holder of the bill.

Where a person indorsed a blank bill stamp, on which a bill was afterwards written, payable "to order":—*Held*: he was liable on a count charging him as maker of a bill payable "to bearer." *Qu.*: whether the bill was rightly so described.—*MATTHEWS v. BLOXSOME* (1864), 4 New Rep. 130; 33 L. J. Q. B. 209; 10 L. T. 415; 10 Jur. N. S. 12 W. R. 795.

*Consol. Steele v. McKinlay* (1880), 5 L. J. K. B. 1

**2069. Warrants solvency of drawee.**—A party by indorsing a bill of exchange warrants the solvency of the drawee, & he is bound to see that it is a bill of good quality.—*Re LAWRENCE, MORTIMORE & SCHRADER* (1861), 4 L. T. 184; *affd.* on

*MORE & SCHRADER, p. LAURENCE*, 5 L. T. 105, L. J.J.

B. As regards

See 1882 Act, ss. 55 (1), 89 (2).

**2070. To subsequent indorser.**—The of successive indorsers of a note must, in the of all evidence to the contrary, be

*ASHCROFT, 6 CAN.*

note, W., the second note had of a M., the amount of the solvency of the plff. for the amount of the ment, & with the understanding that an indorsement would be given. M. the note after plff. with of those facts:—*Held*: he was

C. P.

payee & first in-

him to prove the that he indorsed with to or

ing no other evidence:—*Held*: there was nothing to go to the jury to a finding for plff.—*MURKIN v. 11 C. P.*

M. & declaration note for

by W., that is

*v. WHITFIELD (1888), 8 App. Cas. 733; 52 L. J. P. O. 70; 49 L. T. 445; 32 W. R. 730, P. O.*

*Annotations:—Reid v. Wolmerhausen v. Galliot, [1893] 2 Ch. 514; Godsell v. oyd (1911), 27 T. L. R. 388.*

determined according to the ordinary principles of the law merchants, whereby a prior indorser must indemnify a subsequent one.—MACDONALD

as such payee indorsed to deft. W. Replication, that before the making of said note the plff. agreed to lend to deft. M. \$100 provided he would procure W. to indorse said note as surety for the payment thereof to plff.: that in pursuance of such agreement M. made, & W., for his accommodation, indorsed, & M. delivered said note to plff. so indorsed, & plff. lent M. the \$100, which had not been paid:—*Held*: replication good.—GUNN v. McPHERSON (1859), 18 U. C. R. 244.—CAN.

*1. To immediate indorser—Payee*

*2.*—The payee of a note indorsed in blank cannot, by merely writing his name above that of the indorser, maintain an action as indorsee against the latter, unless he show authority from the indorser so to do, with the express object of creating between them the relationship & consequent liability of indorser & indorsee.—ROBERTSON v. (1865), 15 C. P. 298.—CAN.

Plff. declared on a note as made by K. to M., & indorsed by M. to deft., who indorsed to plff. Plea, that deft. did not indorse to plff. as alleged. The name of deft. appeared as indorser on the note before that of M.:—*Held*: as M.'s indorsement to deft. was not denied, his name appearing before deft.'s could not affect the right of recovery.—BRIGHTON KIN (1866), 25 U. C. R. 257.—CAN.

*1.*—*II.* being indebted to plff., gave him his promissory note payable to J. & Co., & indorsed by deft. The indorsements on the note appeared in the following order: deft., J. & Co., & plff.:—*Held*: plff. might recover against deft., notwithstanding that the note showed no indorsement by the payee to deft., & then by deft. to plff.; all the facts & circumstances attendant upon the issue & transference of a bill may be referred to for the purpose of ascertaining the true intention of each other of the parties to put their signatures upon it, as makers or indorsers.—McARTHUR (1895), 10 Man. 9.—CAN.

*m.*—*1.*—A promissory note showed the name of W., one of defts., as indorser, indorsed under that of plff., the payee of the note:—*Held*: prima facie evidence that W. was not liable on the note to plff., & that plff. was not the holder of the note.—TAY YUNG v. C.

*indorser sued.*—A note payable to the order of deft., & indorsed, "pay to the order of A.,

the of

Man. L. R. 152.—CAN.

may maintain an action for money lent against the

to Ir.

2070 v. subsequent CAN, supra.

2070 II. —.]—WICKWIRE & WICKWIRE v. PASSAGE & TOMLIN, supra.—CAN.

2070 III. — Agreement to vary order of liability.—Parties to notes are liable in the order on which they stand on the note, & the last holder may so treat them, notwithstanding any agreement among themselves, & although some one of the later parties may be the person for whose accommodation it was made, & who is ultimately liable upon it, & this even when the holder is aware of the facts.—ELDER v. KELLY (1851), 8 U. C. R. 240.—CAN.

2070 IV. — Accommodation indorsement—Admissibility of oral evidence.—An incorporated trading co., of which plff. was president, bought from deft. shares in another co. for \$2,000. The agreement was that deft. was to take in payment of the price promissory notes of the purchasing co., indorsed by plff. The notes were made by the co. payable to the order of deft. & were then indorsed by plff. & afterwards by deft., who wrote his name, he being payee, above plff.'s name. The notes were discounted by deft. & after maturity were paid by plff., who sued deft. for the amount which he had paid. Plff. admitted that he indorsed the notes for the accommodation of the co.:—*Held*: oral evidence was admissible to show the exact relationship between the parties, & plff. had no recourse against deft., although by the position of the names upon the back of the notes the latter appeared to be a prior indorser.—HATFIELD v. McCROHAN (1910), 15 W. L. R. 638.—CAN.

2070 V. — Guarantee by subsequent indorser.—Deft. indorser, being sued on a promissory note, pleaded that he had indorsed for credit, & that plff., a subsequent indorser, had guaranteed the prior indorser that he would see the note paid:—*Held*: not proved, it appearing that deft. had by a letter to plff. personally guaranteed due payment of the note.—WILLIOTT v. COURT 6 L. N. 204.—CAN.

2070 VI.

*1.*—An indorser of a note cannot pay the amount of a judgment obtained thereon against a previous indorser, & enforce it for his own benefit.—P. R. 317.—CAN.

*B. To holder—Note payable to bearer.*—A. made a note payable to B. or bearer, & delivered it to B., who indorsed to C. The holder sued B. on his indorsement:—*Held*: the note would lie.—SCOTT v. DOUGLAS (1836), 5 O. R. 397.—

*q.*—*1.*—A party indorsing a note payable to A. or bearer, may be sued as indorser. He may also be sued jointly with the maker, under 3 Vict. c. 8.—RAMADELL v. TELFER (1849), U. C. R. 508.—CAN.

*r.*—Accommodation indorsement—Sum payable on bill uncertain.—Deft. indorsed notes for the accommodation of the maker, who was in business as a druggist, without knowing how they were to be applied, & the maker transferred them to plff. for goods purchased from them. Deft. not being liable upon them as notes, the sums payable being uncertain:—*Held*: there was clearly no right of action against him as upon a guarantee.

*payable to indorser—Debt due from maker.*—Plff. sued deft. as indorser of a promissory note made by the C. Co. (of which deft. was manager), payable to the order of deft. Deft. pleaded that the note sued on represented an indebtedness of the co. to plff., & was indorsed by deft. at plff.'s request without consideration:—*Held*: deft. was liable to plff. upon the promissory note.—SWEET v. ARCHIBALD (1913), 12 E. L. R. 486; 11 D. L. R. 570.—CAN.

*t.*—*1.*—Note for past debt & future advance—Advance not made.—Deft. indorsed a note for \$1,230, for the purpose of enabling the maker to obtain, as an additional advance from an estate of which plff. was receiver, the difference between that sum & a loan of \$918, advanced to him before the making of the note, which additional advance was, however, not made:—*Held*: deft. was not liable as indorser for the \$918 originally loaned, & a plea setting up the above facts was good.—GREENWOOD v. PERRY (1869), 19 C. P. 403.—CAN.

*u.*—*Defences available.*—BANQUE NATIONALE v. SALOIS (1912), 19 N. S. R. 399.—CAN.

*off—Accommodation note.*—Set-off by indorsees against the holder:—*Held*: no defence at law or equity, upon a note given for the accommodation of the indorser.—WOOD v. ROSS (1859), 8 C. P. 299.—CAN.

*w.*—*Action stayed against maker.*—The fact that an action upon a promissory note is stayed as against the maker by War Relief Acts, 1916-1917, is not a ground of defence in an action against an indorser.—ROYAL BANK OF CANADA v. GOLD, [1918] 2 W. W. R. 745; 25 B. C. R. 409; 41 D. L. R. 276.—CAN.

*x.*—*No intention to* Where a person is sued on a promissory note, the indorsement of which he admits to be in his handwriting, his own evidence in the cause, to the effect that he wrote his name under the impression that he was signing as witness to a receipt, cannot avail to exempt him from liability on the note, in the absence of any testimony to show that he was incapable of understanding what he was doing.—DANIEL v. McBURNEY (1894), Q. R. 6 S. C. 357.—CAN.

*y.*—*The sale of a note not* yable to order is not a transaction, but a civil the placing by of his name on the back has only the effect of authorizing the holder to obtain the amount as agent or proxy.—ROWAN v. COWAN (1894), Q. R. 6 S. C.

*action* indorser of a bill of in favour of deft., the that deft. indorsed make the bill negotiable & the purpose of giving plff. any cause of action against deft. in case the bill should be dishonoured:—*Held*: in the absence of circumstances showing it was not intended to make deft. afterwards liable on his indorsement, deft. was liable.—MORTIMER v. O'CONNOR (1878), 1 N. S. W. S. C. R. N. S. 227.—AUS.



In an action against the indorser of a must prove a demand, or an endeavour to make a demand, upon the maker within a proper time after the note became payable.—*LAMBERT v. OAKES* 90), 1 *Ld. Raym.* 443; 12 *Mod. Rep.* 244; *olt.* K. B. 117; 91 *E. R.* 1194; *sub nom.* *LAMBERT v. PACK*, 1 *Salk.* 127; *sub nom.* *ANON.* 1 *Salk.* 126.

2072. —.]—Pltf., in an action on a promissory note against second indorser, did not allege a demand on the maker or first indorser:—*Held*: good, as the indorser charged himself in the same manner as the maker.—*HARRY v. PERBIT* (1710), 1 Salk. 133; 91 E. R. 126.

**2073.** —.—In an action on a promissory note against the indorser, pltf. need not allege a demand on the maker.—**LAWRENCE v. JACOB** (1722), 8 Mod. Rep. 43; 1 Stra. 515; 88 E. R.

**2075.** —.—A declaration by indorsee  
indorser of a note is good, without stating the  
default of the maker.—*BILSON v. HILL*. (1734),  
7 Mod. Rep. 198; *Ridg. temp. H.* 40; 87 E. R.  
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---**Hendt.** *Sanderson v. Collman* (1842), 4 Man. &

agent. 1.—A party who indorses a note is liable, although he intended to do so at the time as the attorney of

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**Heylyn v. Adamson (1738), 2 Burr.**

**NOTE. — Part payment by indorser.**— If the indorser pays part of a note, demand on the maker

**Notice of dishonour.]**—Where deft. lent his indorsement on a promissory note to the drawer, which note was payable on demand, for the purpose of enabling him to raise money on that note from pliffs., his bankers, who agreed to advance thereon for 6 months:—**Held:** the bankers, who had renewed their advances at the end of the 6 months without the knowledge or consent of deft., could not recover upon the note thus indorsed by him, without proof of a demand on the drawer & a regular notice of the dishonour to deft. — **SMITH v. BECKET (1810), 13 East, 187; 104 E. R. 341.**

. Not new maker of note. — A. made a note payable to order, B. indorsed it to C. — *Held*: C. could not sue B. as the maker of the promissory note. — *GUINNELL v. HERBERT* (1836), 5 Ad. & El. 430; 2 Har. & W. 194; 6 Nev. & M. K. B. 723; 111 E. R. 1231; *sub nom.* GUINNELL v. HERBERT, 5 L. J. K. B.

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# 312 BILLS OF EXCHANGE, PROMISSORY NOTES AND

5 & 6.]

## SUB-SECT. 1

1892 Act, s. 55 (2) (b) (c).

**2082. Prior indorsement.]—Semble:** an indorser not impliedly warrant the validity of prior indorsements.—*EAST INDIA CO. v. TRITTON* (1824), 3 B. & C. 280; 5 Dow. & Ry. K. B. 214; 3 L. J. O. S. K. B. 24; 107 E. R. 738.

*Annotation:—Eld. Guaranty Trust Co. of New York v. Hannay*, (1918) 2 K. B. 625.

— **Or drawing.]—Qu.:** whether the indorser of a bill of exchange be estopped from denying the drawing, or previous indorsement.—*ARMANI v. CASTRIQUE* (1844), 13 M. & W. 443; 2 Dow. & L. 432; 14 L. J. Ex. 30; 153 E. R. 185.

*Annotations:—Conrad. MacGregor v. Rhodes* (1856), 6 E. & B. 266. *Mentd. Ellis v. M'Henry* (1871), L. R. 6 C. P. 228; *Re Debtor* (No. 333 of 1917), *Ex p. Debtor* (1918), 34 T. L. R. 277; *Re Nelson, Ex p. Dare & Dolphin*, (1918) 1 K. B. 459.

**2084.** — **—** A declaration charged that P. drew a bill of exchange payable to his own order, & indorsed it to deft., who indorsed it to pltf., & that the bill was dishonoured, & deft. did not it. Plea, denying the indorsement to deft.: — the plea was bad, deft. being estopped by

his admitted indorsement, from traversing the indorsement to himself.—*MACGREGOR v. RHODES* (1856), 6 E. & B. 266; 25 L. J. Q. B. 318; 27 L. T. O. S. 99; 2 Jur. N. S. 834; 4 W. R. 483;

—*Eld. Smith v. Johnson* (1858), 27 L. J. Ex.

**2085. Validity of indorsement—By husband—** Note given to him by his wife.]—If a husband indorses a note given him by his wife, as between him & the indorsee it is good.—*HALY v. LANE* (1741), 2 Atk. 181; 26 E. R. 513.

**2086. — Bill made to fictitious payee.]—** An indorser is bound by his indorsement, though the bill is made to a fictitious payee.—*Re LIVESAY, Ex p. CLARKE* (1791), 3 Bro. C. C. 238; 29 E. R. 511, L. C.

**2087. Validity of instrument.]—** Where a bill of exchange was, without the privity of the acceptor, altered by inserting the words "payable at A.," & afterwards indorsed to pltf. for value, who took it *bonâ fide* & without knowledge of the alteration: — *Held:* pltf.'s remedy was confined to a right to recover the consideration for the bill as between himself & his immediate indorser, & a similar remedy might be resorted to between all prior parties to the bill until the party was reached through whose fraud or laches the alteration was

## PART XIII. SECT. 4, SUB-SECT. 2.

**k. Drawer's signature.]—** The indorser of a bill is estopped, by the fact of his indorsement, from denying either the signature of the drawer or her competence, being a *feme covert* to draw the bill.—*ROSS v. DIXIE* (1850), 7 U. C. R. 414. — CAN.

an indorser, who was also the drawer, a defence averring "that he did not draw" the bill of exchange: — *Held:* it was not competent for deft., as he did, by his pleading, the fact of the drawing.—*St. Giorgio v. Young* (1850), 8 Ir. Jur. 128. — IR.

**2083 i. Prior indorsement.]—** Declaration against L. & A. as indorsers of a note payable to the order of L., averring that defts. duly indorsed the note, & that A. delivered it so indorsed to pltf.: — *Held:* A. must be taken to be the immediate indorser of L., & could not deny L.'s indorsement.—*GRiffin v. LATIMER* (1856), 13 U. C. R. 187. — CAN.

**2083 ii. — By joint payee.]—** A note made to C. & D. jointly was indorsed by C. alone to B. & by B. to A.: — *Held:* B. was liable as indorser, & could not set up as a defence to an action by A. that D. had not joined in the indorsement.—*THURMAN v. CLARKE* (1814), 3 Kerr. 370. — CAN.

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note, even though the indorser be a surety, admits, *prima facie*, at all events, the ability & signature of all prior parties.—*WIEDERMAN v. QUITTARD*, 22 C. L. T. Occ. N. 129. — CAN.

**2085 i. Validity of indorsement.]—** A. being indebted to pltf., made a note payable to pltf., procured deft. to indorse it in blank, & delivered it to pltf., who discounted the note, having indorsed it under deft.'s indorsement. The note having been dishonoured, pltf. took it up, struck out their indorsement, & again indorsed it above deft.'s name, adding to their

own name "without recourse," & then sued deft. *Semble:* deft. was estopped from denying that pltf.'s name was indorsed when it ought to have been.—*PECK v. PHIPPOX* (1852), 9 U. C. R. 73. *Not follid.; see p. 215, ante.* — CAN.

**2085 ii. —** Indorsers sued defts. separately as payees & indorsers of a note. The declaration averred a joint indorsement by defts., & the liability of deft. Demurrer, because a joint liability with another indorser was shown on the face of the declaration: — *Held:* the declaration was good.—*COMMERCIAL BANK v. CULVER* (1847), 3 U. C. R. 363. — CAN.

**2085 iii. — Forged indorsement.]—** A party whose name appears as indorser on a note, who transfers securities to the holder "to guarantee him for the indorsement on the note," is estopped from pleading that his indorsement is a forgery.—*BANQUE NATIONALE v. LEMAIRE* (1913), Q. R. 44 S. C. 445. — CAN.

## iv. — Indorsement

— **B. signed deft.'s name as** indorser to various notes with, as he alleged, deft.'s consent. Dft. denied that he had given authority, & the jury found a verdict for him: — *Held:* there must be a new trial, & deft. should not be permitted to repudiate his indorsements, not having disclosed to pltf. B.'s want of authority.—*MERCHANTS BANK v. BOSTWICK* (1878), 28 C. P. 456. — CAN.

against the indorser of a note, it appeared that his name had been written by the maker, his nephew, & there was no evidence of express authority, but it was proved that deft. had before & afterwards indorsed for his nephew on purchases by him from pltf., & that when payment of the note was demanded of him, he had asked for it & had not denied his indorsement until some months afterwards, when maker had absconded. His excuse was, that he kept no memorandum of his indorsements, & supposed it was right: — *Held:* deft. had precluded himself by his conduct from disputing

his liability.—*PRATT v. Drake* (1850), 17 U. C. R. 27. — CAN.

**2087 i. Validity of instrument—Made by company.]—** The indorser of a promissory note, purporting to be made by a corp., is estopped from alleging that the note was *ultra vires* the makers.—*MERCHANTS BANK v. UNITED EMPIRE CLUB* (1879), 44 U. C. R. 468. — CAN.

**2087 ii. —** In an action on a promissory note, signed by an incorporated co., the indorser was brought in *en garantie*, & pleaded that the co. at the time of signing had not a corporate existence, & had never complied with the requirements of the law as to payment into a bank of a portion of its capital, etc.: — *Held:* the defence was bad.—*BALL v. ATLANTIC & LAKE SUPERIOR RY. CO.* (1900), 3 Q. P. R. 1. — CAN.

**2087 iii. —** A note was made by deft. co. in favour of pltf., to secure a loan made to G.: — *Held:* the directors, who indorsed the note, were estopped from disputing the validity of the transaction, by their indorsements.—*KNECHTEL FURNITURE CO. v. IDEAL HOUSE FURNISHERS* (1910), 14 W. L. R. 175; 19 Man. L. R. 652. — CAN.

**2087 iv. — Maker's signature without authority.]—** In an action by indorsee against maker & indorser, the jury found for the maker on the ground that his name had been signed by another person as agent without authority, but they found against the indorser. *Qu.:* whether, notwithstanding the fact that there was no maker, the judge ought to have told the jury that the indorser was estopped from showing that the bill which he indorsed had in truth no maker's name on it.—*HANCOCK v. COTTON* (1837), 16 U. C. R.

**2087 v. — Maker's signature forged.]—** The indorser for accommodation or for value of the note cannot set up in due course that



# LIABILITY OF PARTIES.

MOORE 354),  
; 23 L. J. Q. B. 281; 28 I. C. O.  
727; 2 W. R. 454; 2 Q. L. R. 118 E. R.  
1297.  
—Bull. Gardner v. Walsh (1855), 5 E. & B. 33;  
Bank of England (1861), 7 Q. B. D. 278.

## SECT. 5.—LIABILITY OF PARTIES TO DATION INSTRUMENTS.

Part X., Sect. 3,

### 1.—LIABILITY OF PERSON SIGNING OTHER- WISE THAN AS DRAWER OR ACCEPTOR.

1882 Act, s. 56.

2088. Ascertainment of true relationship of parties.—The whole circumstances attendant upon the making, issue, & transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it either as makers or indorsers; & reasonable inferences derived from these facts & circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them.—MACDONALD v. WHITFIELD (1883), 8 App. Cas. 733; 52 L. J. P. C. 70; 49 L. T. 440; 32 W. R. 730, P. C.

—Apprd. Godsell v. Lloyd (1911), 27 T. L. R. 383. *Mentid.* Wolmershausen v. Gullick, (1863) 2 Ch. 514.

2089. Name of co-executor added on bill.—To facilitate collection of assets.—If a bill is transmitted to two exors., before they become so, payable to them personally, the joining of one, after they are exors., merely by indorsement, to enable the other to receive the money, would not be sufficient (ARDEN, M.R.).—HOVEY v. (1849), 4 Ves. 596; 31 E. R. 306.

186; Wagstaff Smith (1804), 9 Ves. 421; *Crowe v. Smith* (1806), 7 East, 246; Tyler v. Lake (1831), 2 M. 183; Denton v. Davy (1836), 1 Moo. P. C. C. 15; Terrell v. Matthews (1841), 1 Mac. & G. 432, n.; Campbell v. (1842), 8 Sim. 168; Styles Guy (1849), 1 Q. B. 447.

2090. Name of stranger on back of bill.—Liability as drawer.—Bill specially indorsed.—The payee of a bill of exchange indorsed it specially to pliff., & immediately after the special indorsement, deft.

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IND.

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—A co. which has no power to make, or indorse negotiable instruments, & nevertheless sells its own shares & takes promissory notes in thereof, which it indorses to

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; 9 L. C. R.

, & then pliff. indorsed it:—Held:

by deft., & he was liable to be sued upon the bill by pliff.—PARRY v. INNES (1884), 1 Cr. M. & R. 459; 5 Tyr. 107; 4 L. J. Ex. 12; 149 E. R. 1152.

Annotations.—Bull. Gwynell v. Herbert (1838), 3 Ad. & El. 438; Matthews v. Bloxsome (1864), 4 New Rep. 139; M'Call v. Taylor (1885), 34 L. J. C. P. 365; Steele v. M'Kinlay (1886), 5 App. Cas. 754; Macdonald v. Whitfield (1883), 8 App. Cas. 733.

2091. —.—Deflt., intending to

to pliff. for A., put his name at the back of a blank bill stamp, on which A. wrote his name as acceptor, & pliff. then drew upon it a bill of exchange payable to their (the drawers') order:—Held: deflt. was liable to pliff. on the instrument as the drawer of a bill, payable either to bearer or to pliff.'s order.—MATTHEWS v. BLOXSOME (1864), 4 New Rep. 139; 33 L. J. Q. B. 209; 10 L. T. 415; 10 Jur. N. S. 998;

—*ad.* Steele v. Bruce Smith, (1907) 5 K. B. 507.

Liability as indorser.—A. procured from B. an advance of £1,000 on a bill of exchange at 12 months for C. & D., his two sons. B. signed the bill as drawer, & addressing it to C. & D., handed it to A., who forwarded it to C. & D. They signed it as acceptors, & sent it back to A., who wrote his own name across the back, & gave it to B. He then forwarded the amount to C. & D. Subsequently C. & D. became bkpt., & were unable to pay the amount of the bill. A. & B. being both dead, there was no exact evidence why A. put his name on the bill. C. & D. had previous to the date of the bill obtained money from B. on their own security. The trustees of B. claimed from A.'s representative the amount of the bill, on the ground that A. indorsed the bill as "joint obligant" with C. & D., " & as co-acceptor with them for payment of its contents":—Held: A.'s representative was not liable.

The character in which A. did become a party to the bill was both in fact & law that of an indorser, & in determining his legal position, the fact that his indorsement was written before the bill was delivered to the drawer, & the money advanced by him, was quite immaterial (LORD WATSON).—STEEL v. M'KINLAY (1880), 5 App. Cas. 754; 43 L. T. 358; 29 W. R. 17, H. L.

—*Consd.* Wilkinson v. Unwin (1881), 7 Q. B. D. 100 (1883), Cal. & El. 23; Macdonald App.

v. Barnard 447;

2 Q. B. 168.  
B. 507. *Consd.* Shaw v. Holland, (1913) 2 Harburg India Rubber Comb Co. & Winter v. artin  
71 L. J. K. B. 529. *Mentid.* Leeds & v. Walker (1883), 11 Q. B. D. 44.

## PART XIII. SECT. 6.

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2087 vii. holder for value of to whom, after it had been dis-

*6.—Liability of person signing otherwise than as drawer or*

**2093.** ——— Name put on bill for discounting purposes—No intention to indorse.]—A bill of exchange drawn by P. on C. was handed to M. S. & Co. for the purpose of getting it discounted, & L., deft., indorsed the bill on the back as follows: "M. S. & Co., Ltd., L., director," & sent it to his bankers, who declined to discount the bill. Deft. then sent the bill to P., who got the bill discounted by plffs. In an action against deft. as indorser, deft. contended that his name was put on the bill with no intention to indorse it, either personally or on behalf of M. S. & Co., but only to enable his bankers to make proper inquiries for the purpose of discounting the bill:—*Held*: as there had been no intention to make a valid indorsement, 1882 Act, s. 56, did not apply, & every element of fraud being absent, judgment must be for deft.—**LONDON & SOUTHERN COUNTIES INVESTMENT ADVANCE & DISCOUNT CO., LTD. v. CLAMP** (1890), 7 T. L. R. 131.

**2094.** Name put on incomplete bill—Before indorsement by drawer—Liability as indorser.]—A bill of exchange was drawn by plff. to his own order on N. & Co., by whom it was accepted. Before it was sent back to plff. deft. was induced to write his name across the back. The bill having been dishonoured the drawer brought an action against deft.:—*Held*: as the bill had not been negotiated, & was drawn to the drawer's order, it did not become negotiable until it had been indorsed by him, & deft. was not liable upon the bill as indorser, but as he had put his name on the bill with the intention of making himself liable in some capacity, deft. was liable as a guarantor.—**SINGER v. ELLIOTT** (1888), 4 T. L. R. 524, C. A.

—A stranger to a bill, who writes his name across the back of it before it has passed out of the hands of the drawer, does not, by the operation either of 1882 Act, s. 55 (2) (a), or of s. 56, thereby become liable to the drawer, upon failure of the acceptor to pay the bill at maturity. The provisions of s. 56, as to the liability of a person who signs a bill otherwise than as drawer or acceptor, are not satisfied, unless the bill be complete on the face of it when signed by such person.—**JENKINS & SONS v. COOMER**, [1898] 2 Q. B. 168; 67 L. J. Q. B. 780; 78 L. T. 752; 47 W. R. 48; 14 T. L. R. 425.

2 K. B.

**2094 I.** Name put on Before indorsement as indorser.]—In an of a bill of red that t bill or that the bill was had, & the of a bill could not be sued as such, unless the bill had been indorsed to him.—**WOOD v. McMANON** (1877), 3 T. L. R. 262.—**AUG.**

**2094 II.** ——— Before signature by maker—Liability as indorser.]—Where a promissory note in favour of certain or order is indorsed by a third with the intention of at then in that condition to the ve authority, y

It tor, & can sue the guarantor in

—**ERIKSEN v. BUNTING** (1901), 20 N. Z. L. R.

**2094 I.** Guarantee indorsed on note—Liability as indorser.]—On the back of a promissory note given by B. to the order of H. appeared the signature of K. & B., under the words, "We guarantee payment of the within note":—*Held*: K. & B. were liable as indorsers.—**LEITCH CORAL SILVER MINES CO. v. HICKLER** (1906), 18 O. L. R. 613; 12 O. W. R. 854.—**CAN.**

**2094 II.** ——— An "on demand" promissory note was executed by the debtor & bore an indorsement on it "repayment guaranteed by me," signed by the person purporting to make the guarantee; the note was by any writing restraining or postponing the right to sue:—*Held*: the indorsement must be as a contract of guarantee by purporting to make the guarantee.—**BRANKENBACH KENNEDY ROY**

507. **Exd.** **Glenie v. Smith**, [1908] 1 K. B. 263. **Shaw v. Holland**, [1913] 2 K. B. 15. **Mentd. F.** **Indiarubber Comb Co. & Winter v. Martin** (1902), 71 L. J. K. B. 529.

**2096.** ———.]—Plffs. agreed to supply goods to a co. against drafts accepted by the co. & indorsed personally by the two defts., who were directors of the co., by way of guarantee. Plffs. drew a bill & sent it to the co., who signed as acceptors. Defts. having thereupon signed their names at the back, the bill was sent back to plffs., who indorsed it by putting their signature below that of defts. The bill not having been met at maturity, plffs. sued defts. as indorsers, or alternatively as guarantors:—*Held*: as plffs. had failed to make the bill a complete & regular bill, they could not maintain their action against defts. as indorsers of the bill of exchange under 1882 Act, s. 56, nor on the contract of guarantee, as there was no note or memorandum in writing, signed by the parties to be charged, sufficient to satisfy Stat. Frauds.—**SHAW (M. T.) & CO., LTD. v. HOLLAND**, [1913] 2 K. B. 15; 82 L. J. K. B. 592; 108 L. T. 543; 29 T. L. R. 341; 18 Com. Cas. 153, C. A.

**2097.** Name indorsed on blank acceptance—Subsequently filled in by drawer—Liability as indorser.]—Deft. entered into an agreement with plff. to guarantee the payment by T. for goods sold to him by plff., & for that purpose to indorse bills accepted by T. for the amount. In pursuance of that agreement T. wrote his acceptances across the face of two blank stamped bill forms, & deft. indorsed them. T. then handed the bill forms to plff., who filled up the body of the bills for the agreed amount, making them payable to his order, signed them as drawer, & also indorsed them. Plff. duly delivered the goods to T., who eventually was unable to pay for them:—*Held*: as deft. agreed to be liable for the price of the goods supplied by plff. to T., & indorsed the bills for that purpose, he was liable on the bills.—**GLENIE v. BRUCE SMITH**, [1908] 1 K. B. 263; *sub nom.* **GLENIE v. TUCKER**, 77 L. J. K. B. 193; 98 L. T. 515; 24 T. L. R. 177, C. A.

—**Consd. Shaw v. Holland**, [1913] 2 K. B. 15.

**2098.** Guarantee indorsed on bill & signed—Liability as indorser.]—A bill of exchange bore an indorsement to the effect that, in case of non-payment by the acceptors, the bill was to be presented to deft. The indorsement was signed by deft.:—*Held*: he could not be sued as indorser,

**CHOWDHURY v. HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD.** (1917), 1 L. R. 44 Cal. 978.—**IND.**

**2098 III.** ———.]—Deft., a married woman, wrote on the back of a promissory note, made by her husband in favour of plffs., an undertaking binding herself as surety & co-principal debtor. She was never the holder of the note, nor was the note indorsed by

maker of the note, & had not by her signature incurred the liability of an indorser.—**MAANDOP v. GRAAFF-REINERT BOARD OF EXECUTORS** (1909), 3 Bush. 482; 19 C. T. R. 497.—**S. AF.**

**2098 IV.** ——— Addition of "witness" to signature.]—A party who adds to his signature the word "witness" under a printed statement on the back of a promissory note guaranteeing payment thereof, is personally liable as an indorser, & the word "witness" is to be taken as merely descriptive &



but was liable as a guarantor.—*STAGG, MANTLE Co. v. BRODRICK* (1895), 12 T. L. R. 12, C. A.

**2099. Name of stranger on note—Liability indorser.]—**A. made a promissory note payable to B. or his order. C. indorsed it:—*Held*: by such C. did not become a new maker of the note, & was liable only in his character of indorser.—*GWINNELL v. HERBERT* (1836), 5 Ad. & El. 436; 2 Har. & W. 194; 6 Nev. & M. K. B. 723; 111 E. R. 1231; *sub nom.* *GUINNELL v. HERBERT*, 5 L. J. K. B. 250.

*Annotations*:—*Consd.* *Jackson v. Slipper* (1869), 19 L. T. 640. *Reid*. *Steele v. McKilay* (1880), 5 App. Cas. 754.

**2100. ——— Name added on face of note after making—As fresh security.]—**Money was lent to one, to secure the repayment of which he & two others made a joint & several promissory note. The lender required payment some years

in no wise intended to exclude or limit liability.—*NICHOLSON v. McKALE* (1912), Q. R. 41 S. C. 340; 3 D. L. R. 237.—*CAN.*

**v. Name of stranger on as maker.]—**A party, not on the face of a note as maker, does not, by indorsing his name thereon, render himself liable to the payee as maker of the *SMITH v. HILL* (1818), 1 All.

**.)—**A by A. & indorsed by C., M. & J. The four parties to the note were sued as makers. Default was entered against A. & the other three they had not made the they were not liable

*Cochran*, 5.—*CAN.*

**t. ———.]—**Where one not a of a promissory note, payable B. or order, puts his name on it it is delivered to the payee to take effect as a note, with intent to give it credit, he will be held liable a maker.—*BELL v. MORFAT* 30 N. B. R. 121.—*CAN.*

**w. ———.]—**Where A. made a note payable to B., or order, & C. wrote his name on the back, without B.'s first indorsement:—*Held*: C. could not be considered as a new maker.—*STEER v. ADAMS* (1810), 6 O. S. 60.—*CAN.*

**x. ———.]—**A note made by A., payable to B., or order, & indorsed by C. in blank, cannot be declared upon by B. as a note made by C. to him, *WILSON v. TUNNING* 7 U. C. R. 372.—*CAN.*

def. on a note which he had obtained to be drawn by another in favour of plff. or bearer, which he, def., had indorsed in blank:—*Held*: to be an indorsement *pour seul*, & def. could not raise any other defence than might have been raised by the maker.—*MARRI v.* 2 L. C. J. 276; 9 L. C.

G. having purchased a of from B. & M., them in a promissory note made by payable to the o H. upon the back of whic of G. had his In an

of def. to stand in the ordinary an indorser to the

9 N. S. R. 336.—*CAN.*

—A. made his payable to B. or bearer. Before

delivery to B., D. indorsed it. B. both A. & D., averring that A. the note, etc., & a delivery to D., who became the lawful bearer thereof, who then, as such, indorsed & delivered to B.:—*Held*: D., the indorser, was liable to B. as the holder of the note.—*VANLEUVEN v. VANDUSEN* (1849), 7 U. C. R. 176.—*CAN.*

—A. & R., being indebted to plffs., etc., by their note, promised to pay to order of plffs. \$150, 3 months after for the better & more perfect & guaranteeing payment to plffs., delivered the note to def., who indorsed same to plffs., &

of action. *It was* U. C. R.

to a payee, is indorsed by person before delivery of the note to the former is liable as indorser to a in due course.—*DURHAM v.* (1895), 22 A. R. 191.

**2099 v. ———.]—**Where were made by insolvent's wife, payable to the creditor's order, & indorsed by insolvent before they were handed to the creditor:—*Held*: insolvent was not liable as indorser.—*STALL v. SON* (1896), 27 A. R. 491

**vi. ———.]—**by two by plff. for holder thereof, the money to him on his agreeing to for the payment of the his name under those of makers:—*Held*: the liability of the signing was that of surety. *v. TOWNLEY* (1896), 27 O. R. 398.—*CAN.*

become security a debt, his name of a

note was not indorsed by in an *It was* wi

maker of rightly *Plouffe* 8. C. R. 256.—*CAN.*

—R. L. O. S. 62.

in made, payable of plff., was ned by G

of

after the date of the note, but upon the makers procuring a new name to the note, he forebore payment. The new name was written on the face of the note, but not under the former names, & had its date appended:—*Held*: the third name, though on the face of the note, was added as an indorsement, & for the purpose of adding a person with fresh liability, & not as a new maker.—*Re SMITH, Ex p. YATES* (1857), 2 De G. & J. 191; 27 L. J. Hcy. 9; 30 L. T. O. S. 282; 4 Jur. N. S. 649; 6 W. R. 178; 44 E. R. 961, L. JJ.

*Annotation* —*Consd.* *Lecan v. Kirkman* 6 Jur. N. 17.

**Name signed on unindorsed note—Subsequent unauthorised indorsement by payee.]—**A., being indebted to B., made a promissory note, payable to the order of B., which B. agreed to take, on having C.'s name indorsed by C.

G. was liable to the holder of the as if he were an indorser.—*SCOTT v. GRANT* (1919), 52 N. S. R. 360.—*CAN.*

**2101 i. ——— Name signed a indorsed note.]—**The indorsement of promissory note by one to whom it been transferred without indorsement, will not make the indorser liable on his

5 N. W. R. 206.—*AUS.*

**ii. ———.]—**M. name on the back of a note before its indorsement by the for

for his name above M.'s, & it without re- his name above M.'s, & his hand: his hand (1870), 9 N. S. W. S. O. R. 118. *AUS.*

**2101 iii. ———.]—**A promissory note made by T. in favour of plffs. & payable to their order, was def. At the time was placed upon it was not upon it:—*Held*

note not having been first indorsed by the person to whom it was made payable, was not a complete & regular note, & def. could not be sued as an indorser, but was liable as a joint promisor. *FREEDMAN & Co. v. CHE LIX* (1905), 7 W. A. L. R. 1 *AUS.*

**2101 iv. ———.]—**A the order of plffs. was in- by L. & P., & underneath by plffs.:—*Held*: L. & P. indorsed as seals & security

2 L. C. L. J.

of a note, not indorsed by the cannot be sued as indorser by ee.—*WICK v. HOWE* (1847),

**2101 vi. ———.]—**Def.'s two sons purchased a vessel from P. for which they gave their note payable to P., or order. Def. wrote his name on the back of the note in the same direction as the writing in the body of the note inside, & it was afterwards P., who wrote his back of the note. P. note to plff., to whom he bled, & plff. sued def. on the ring that P. indorsed the note to

into of of it to to be by he

. 6.—*Liability of person signing otherwise than as drawer or acceptor. Sect. 7.*]

on the back of the note. Thereupon, & before any indorsement by B., C. wrote his name on the back of the note:—*Held*: that, alone, did not amount to an authority to B., the payee, to put his name on the back of the note, above C.'s name, so as to constitute C. an indorsee, & so liable as a second indorser. *Qu.*: as to what would the effect have been, if C. had given such authority expressly.—*LECAAN v. KIRKMAN* (1859), 6 Jur. N. S. 17; 7 W. R. 490.

**2102. Name of stranger on non-negotiable note—Proof of liability.**—Deft. had placed his name at the back of a non-negotiable promissory note, which had been signed in the usual way by another person as maker, & made payable to pltf. as payee. In an action by the payee against deft., as a joint maker of the note:—*Held*: the document by itself was not sufficient evidence of deft.'s intention to make him primarily liable upon the note as one of the makers.—*JACKSON v. SLIPPER* (1869), 19 L. T. 640.

**2103. Successive indorsements as co-sureties—Liability as indorsers inter se—Contribution.**—

R. & O. 432; 2 C. L. T. 262.

CAN

**2101 vii.** ————A promissory note was made by A. to the order of testator of pltf. Afterwards A. conveyed his farm to his son, deft., on an understanding that the son was to pay the father's debts, including the note. The payee having pressed the father for the son, without any indorsement of the note by the payee, wrote his name on the back of it, all parties supposing that he had thereby rendered himself liable as indorser. Subsequently he made a payment on to the payee:—*Held*: no liability to son, either as indorser or as trustee of the to him.—*ROBERTSON v. O. R.* 600.

r. 1

—CAN.

**2101** ———— put name on the back of a promissory note before it was indorsed by pltf., the payee, who then indorsed it "without recourse," & sued him on it:—*Held*: he was not liable either as indorser or as surety or

BANK OF (1899), 31 O. R. 116.—CAN.

**2101 ix.** ———— who indorses a promissory note, not indorsed by the payee, is liable as an indorser to the latter.—*ROBINSON v. MANN* (1901), 22 C. L. T. Occ. N. 2; 31 R. C. R.

**2101 x. S.** (1905), 10 O. L. R. 848; 6 O. W. R. 628.—CAN.

**2101 xi.** ————In an of two promissory C. & M. & indorsed by pltf. did the notes until they were pre-

bank for payment, only for the purpose of protest:—*Held*: the fact that C. indorsed before pltf. operated as an oral, & C. incurred the liability of an indorser.—*McDONALD v. COOK* (1899), 13 O. W. R. 808; 19 O. L. R. 267.—CAN.

**2101 xii.** ————A promissory note was made a co. & in

to

or

Act, s. 131.—*KNECHTEL TURE CO. v. IDEAL HOUSE* (1910), 14 W. L. R. 175; 19 Man. L. R. 652.—CAN.

**2101** ———— deft. was liable upon his indorsement of a promissory note, notwithstanding that he was not the payee & had indorsed before the payee.—*JOHNSON v. MACRAE* (1911), 17 W. L. R. 132.—CAN.

**2101 xiv.** ————A promissory note made by A., in favour of B., bore the indorsements "R. without recourse," "C.," "B.," above one another, & in that order. It appeared that C. took the note, which had been already signed by A., & was intended to be used by way of renewal of a previous promissory note made & indorsed in the same way, to B., who refused to take it, unless C. herself first indorsed it. C. signed her name on the back of the note with the intention of indorsing it, & of being liable as an indorser to B., & then B. took it. B. subsequently placed his indorsements on the note in the order in which they appeared. In an action by B. against C. upon the note:—*Held*: C. was liable to B. either as an indorser or under Instruments Act, 1890, s. 57.—*STEWART* (1912), 16 L. R. 32.—AUS.

**2101** ———— who indorses a promissory note not indorsed by the payee at the time, is liable to the payee who has given value for it to the maker.—*PACIFIC LUMBER CO. v. IMPERIAL TIMBER & TRADING* (1917), 1 W. W. R. 507; 23 B. C. R. —CAN.

**2101 xvi. S. P.**

1 W. W. R. 731.—CAN.

**2101** ———— dorser of a promissory note is liable on his indorsement, even where the note has not been indorsed to him by the payee.—*COOK v.* 11 N. E. L. R. 305.—N. E.

**2101 xviii.** ———— nature of a third party at the back of not indorsed by the

S. AF.

**2101 xix.** ———— P. VERNER VAN

Where the directors of a co. mutually agreed with each other to become sureties to the bank for the same debts of the co., & in pursuance of that agreement successively indorsed three promissory notes of the co.:—*Held*: they were entitled & liable to equal contribution *inter se*, & were not liable to indemnify each other successively according to the priority of their indorsements.—*MACDONALD v. WHITFIELD* (1883), 8 App. Cas. 733; 52 L. J. P. C. 70; 49 L. T. 446; 32 W. R. 730, P. C.

*Annotations*:—*Reid*, *Wolmershausen v. Gullick*, [1893] 2 Ch. 514. *Mentd.* *Godsell v. Lloyd* (1911), 27 T. L. R. 383.

Liability of indorser generally, *see* Sect. 4, *ante*.

Indorsement generally, *see* Part XI., Sect. 15,

## SECT. 7.—LIABILITY OF DRAWEE WHO DOES NOT ACCEPT.

*See* 1882 Act, s. 53 (1).

**2104. Agreement—To accept on certain conditions—Conditions not complied with.**—An agreement to accept a bill on certain conditions is

& Co. v. PIENAAR (1904), 21 S. C. 14 C. T. R. 318.—S. AF.

indorsing a promissory note made to order, but not indorsed by the payee, *prima facie* incurs the liability of an oral or surety for the maker to the lawful holder.—*KLOPPER v. VAN STRAATEN* (1894), 11 S. C. 94.—S. AF.

**2101 xxi.** ————Where two persons put their names on the back of an unindorsed promissory note, which did not bear the signature of the payee:—*Held*: they signed as sureties.—*WRIGHT v. JEARCY* (1916), S. R. 110.—S. AF.

**2102 i. Name of stranger on non-negotiable note—Liability as maker.**—Deft. having indorsed in blank, as surety for the maker, a note payable to pltf., but not negotiable:—*Held*: he was not liable as maker.—*McMURRAY v. TALBOT* (1856), 5 C. P.

**2102 ii.** ————Y., being deft. of borrowing money from pltf., wrote a note in the following form: "Six months after date, for value received, I promise to pay (pltf.) 940." Y. signed at the bottom of the note, & deft. wrote his name across the back, stating at the same time that the note was "a joint note," & handed it to pltf.:—*Held*: deft. was liable as maker, the circumstances clearly showing he intended himself to be liable as such.—*PETERS v. HALL* (1875), 2 P. & B. 34.—CAN.

**2102 iii.** ————*Liability a.* The indorser of a note not cannot be sued as indorser by the payee.—*WEST v. BOWN* (1847), 3 U. C. R. 290.—CAN.

**2102 iv.** ————W. made a note payable to pltf., but not negotiable, which deft. indorsed. The note had been given for money lent to W. by pltf. in deft.'s presence, for which agreed to become security:—defts. could not be held l

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## PART XIII. SECT. 7.

a. 4

— Goods

of C. to

the bill of lading w



discharged if the conditions are not complied with. If there is a virtual acceptance, on consideration that goods shall be consigned to the acceptor to answer the bill, together with a policy of insurance upon them, the holder of the bill, by taking to the goods & selling them, discharges the acceptance.—*MASON v. HUNT* (1779), 1 Doug. K. B. 297; 99 E. R. 102.

—*Reid*. *Wynne v. Raikes* (1804), 2 Smith, K. B. 98; *Bentley, Ex p. Bolton* (1838), 7 L. J. Rep. 10.

**2105. — To pay debt by bill.—In three months by bill of two months.**—Where goods were sold upon a contract that the vendee was to pay for them in 3 months by a bill of 2 months:—*Held*: the contract was for a credit of 5 months, & *assumpsit* for goods sold & delivered could not be brought at the end of 3 months upon the neglect of the vendee to give his bill at 2 months, the remedy being by a special action on the case for damages for the breach of contract in not giving such bill.—*MUSSEN v. PRICE* (1803), 4 East, 147; 102 E. R. 780.

*Dutton v. Solomonson* (1803), 3 P. 582; *Hoskins v. Duperoy* (1808), 9 East, 498; *Rabe v. Otto* (1903), 89 L. T. 562. *Reid*. *Rugg v. Weir* (1864), 16 C. B. N. S. 471; *Anderson v. Carlisle Horse Clothing Co.* (1870), 21 L. T. 760. *Mentd*. *Lee v. Raddon* (1816), 7 Taunt. 188; *Hickley v. Harley* (1817), 7 Taunt. 312; *Jefferson v. Querner* (1874), 30 L. T. 867.

**2106. — Of two months.**—If goods be bought to be paid for by a bill at 2 months, & the vendor draws upon the vendee for the value, who refuses to accept, the vendee cannot be sued in an action for goods sold & delivered till after the expiration of the 2 months. *Semble*: he cannot be sued at all in such an action, but only upon the special contract.—*DUTTON v. SOLOMONSON* (1803), 3 Bos. & P. 582; 127 E. R. 314.

*Annotations*:—*Apld*. *Rabe v. Otto* (1903), 89 L. T. 562. *Reid*. *Hoskins v. Duperoy* (1808), 9 East, 498; *Helps v. Winterbottom* (1831), 2 B. & Ad. 431; *Rugg* (1864), 16 C. B. N. S. 471. *Mentd*. *Anderson v.* (1818), 5 Price, 630; *Fragano v. Long* L. J. O. S. K. B. 177; *Freeman v. Birch* Nev. & M. K. B. 420; *Coats v. Chaplin* (1842), 3 Q. B. 483; *Bushel v. Wheeler* (1844), 8 Jur. 532; *Coombs v. Bristol & Exeter Ry. Co.* (1858), 3 H. & N. 510; *Smith v. Hudson* (1865), 6 H. & S. 431; *L. & N. W. Ry. Co. v. Hudson*, [1920] A. C. 321.

**2107. — Bill drawn for larger amount than debt.**—If the agreed terms of payment for goods sold be by a 3 months' bill, the buyer to have the option of paying cash at 2½ discount, the buyer is not bound to accept a bill for a larger amount than his debt, & even if he refuse to a bill correctly drawn, the seller cannot sue for goods sold & delivered before the end of 3 months from the date of the bill drawn by him. If the agreed terms be cash, with buyer's option of a bill, the seller can sue immediately upon the buyer's refusal to accept.—*ANDERSON v. CARLISLE HORSE CLOTHING CO., LTD.* (1870), 21 L. T. 760.

—*Reid*. *Rabe v. Otto* (1903), 89 L. T.

**2108. — To accept against shipping documents**—Particular cargo not specified—Agreement to accept draft at ninety days' sight—Bill drawn at six months.]—A. & B., merchants in London, being applied to on behalf of C., resident at Demarara, to give him a letter of credit for £30,000 to enable him to purchase produce to load certain vessels for the port of London, & to accept his drafts at 90 days' sight on receiving invoice, bill of lading, & orders for insurance to the extent of certain fixed prices for various kinds of produce, wrote to C., stating that they consented to make the advances required upon the terms described, & that upon receiving the documents before mentioned, & no irregularity appearing, they would accept his drafts at the usual date to the extent of £30,000. C. shipped produce to the value of £800 on board one vessel, & to the value of £1,000 on board another, & sent the necessary documents to A. & B., & directed the surplus of the proceeds of the first cargo, after repaying the advances of A. & B., should be paid to D. in London, & that the surplus of the second should be held by them to abide by his future advice. C. afterwards drew a bill upon A. & B. for £500 at 6 months' sight, & did not specify to the account of which cargo it was to be charged. A. & B. refused to accept it, & C. having thereupon brought an action against them:—*Held*: (1) C. was not bound to draw at 90 days, but might draw at any usual date, & 6 months could not be considered unusual, the jury not having found it to be so; (2) C. was not bound to specify to which cargo the bill was to be charged, for, in the absence of any direction by him, A. & B. might charge it to either at their election.—*LAINO v. BARCLAY* (1823), 1 B. & C. 398; 2 Dow. & Ry. K. B. 530; 1 L. J. O. S. K. B. 135; 107 E. R. 148.

**2109. — By letter of credit—Bill of lading as security—Bankruptcy of issuer of letter of credit.**—Where a bank has issued a letter of credit, on the terms that the bills which they agree to accept are to be covered by bills of lading to a like amount, suspension of payment by the bank, before there has been time for the letter of credit to be is not a breach or repudiation of contract, as permission might have been given to the dators under the winding-up to negotiate the & claim by the holder of the letter of credit, under Cos. Act, 1862 (c. 89), for damages for the alleged breach, was disallowed.—*Re AGRA BANK, Ex p. TONDEUR* (1867), L. R. 6 Eq. 160; 87 L. J. Ch. 121; 16 W. R. 270.

—*Data*. *Re Barber, Ex p. Agra Bank* R. 9

**Subject to conditions—Holder with notice of conditions.**—Letters of credit, containing a promise to accept bills, create a contract between the giver of the letters & the person who advances money on the faith of them, only when

a bill being C. never when it  
ed for bill for the  
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the bill C. who had with  
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bill

above avowment of W. was inadmissible in competition with an avowment in C.'s hands used by the agents who transmitted the order for the goods.  
LLE v. MACLEAN (1833), 11 Sh. (Ct. of Sess.) 713; sub nom. MACLEAN & STEWART v. WARRICK BROTHERS (1833), 20 Fac. Coll. 425.—SCOT.

a foreign correspondent of B., him a bill drawn by A. upon B.

it & give it to C. in for an equal amount of free bills in C.'s hands. B. handed

it to D. for value, informing him of the conditions & communicating the memorandum. D. sent the bill to for

D. for B. was Co. v. (Ct. of

In of the bill H.

**Sect. 7.—Liability of drawee who does not accept.**

such letters are intended to be shown to third persons for the purpose of obtaining advances, or where the giver of the letter has so conducted that such an intention may fairly be

Documents in the form of letters of credit addressed by debts. to S. & Co., corn merchants, authorising them to draw bills on debts. against shipments of grain. To the documents certain conditions were appended. S. & Co. drew bills upon debts. under the credit so opened without performing the conditions. Pltfs., having notice of the conditions, & knowing that they were unfulfilled, advanced money on the bills so drawn, which debts. refused to accept. In an action against debts. for not accepting the bills:—*Held*: if the documents created a contract between plts. & debts., that contract was subject to such of the conditions as were not necessarily subsequent to the advance.—*UNION BANK OF CANADA v. COLF* (1877), 47 L. J. C. P. 100, C. A.

*Annotation*:—*Fidd*. Chartered Bank of India, Australia, & China v. Macfayden (1895), 64 L. J. Q. B. 367.

**2111.** ——— **Against produce bought & paid for.**—M. & Co., merchants in London, opened a credit, £5,000 for one year, in favour of K. & Co., commission agents in Batavia, by letter. The credit was to be availed of by drafts on M. & Co., at 3, 4, or 6 months' sight, against produce bought & paid for by K. & Co., not immediately ready for shipment, but to be shipped within 2 months of the passing of the drafts & documents in full cover. The produce bought under the credit was to be held under a lien to M. & Co. until the documents had been handed by K. & Co. to their bankers for transmission to M. & Co. K. & Co. presented the letter of credit to a banking co., & through them negotiated bills drawn on M. & Co. without having purchased produce:—*Held*: (1) the letter was not on open credit; (2) before drawing on M. & Co., K. & Co. must have bought & paid for produce, as the words "to be" could not be interpolated before the words "bought & paid for"; (3) as between M. & Co. & K. & Co., if M. & Co. became aware that no purchase of produce had been made, they were entitled to refuse to accept the bills, & the banking co., having relied on the good faith of K. & Co., must take the consequences.—*CHARTERED BANK OF INDIA, AUSTRALIA, & CHINA v. MACFAYDEN & CO.* (1895), 64 L. J. Q. B. 367; 72 L. T. 428; 43 W. R. 307; 11 T. L. R. 289; 39 Sol. Jo. 365; 1 Com. Cas. 1; 15 R. 333.

**2112.** ——— **To renew bill—Payment of first bill—Refusal to renew.**—A. drew a bill on B., which B. accepted, & of which C. became the holder for value. Before due date it was agreed between A. & C., A. assuring C. of B.'s concurrence, that the bill should be renewed, & C. gave to A. a cheque on

C. for the amount of the bill, to the intent that B. should be placed in funds to meet the original bill, & should thereupon accept the renewed bill. A. sent the new bill to B. for acceptance, & also sent him the cheque, & B. knew the purposes for which both were sent. B. cashed the cheque & paid the first bill, but refused to accept the second:—*Held*: B. had no right so to appropriate the cheque without accepting the bill.—*TORRANCE v. BANK OF BRITISH NORTH AMERICA* (1873), L. R. 5 P. C. 246; 29 L. T. 109; 21 W. R. 529, P. C.

*Annotations*:—*Consd.* Ackroyd v. Smithies (1885), 54 L. T. 130. *Mentd.* Rouse v. Bradford Banking Co., [1894] 2 Ch. 32.

**2113.** ——— **To accept bill as security for debt—Proof of damage.**—If there is an agreement on the sale of goods that credit should be given, & as a security an agreement by the purchaser to give an acceptance, if the purchaser refuses to give such acceptance. *Semble*: there may be an action for refusing to accept the bill, if damage can be proved.—*RABE v. OTTO* (1903), 89 L. T. 562; 20 T. L. R. 27.

**2114.** **Agent authorised to draw on principal—Contract of indemnity.**—Where the owners of a ship instruct the captain to make purchases in a foreign country, & to draw bills upon them in payment, the promise implied by the law is not a promise to accept or pay the bills, but a promise to indemnify the captain against any loss, damage, etc., sustained by him from having drawn the bills.

Stat. Limitations, in an action by drawer against drawee for not accepting, does not begin to run from the time of the refusal to accept or pay the bill, but from the time when pltf. actually sustains damage, e.g., when he is arrested.—*HUNTLEY v. SANDERSON* (1833), 1 Cr. & M. 407; 3 Tyr. 469; 2 L. J. Ex. 204; 149 E. R. 483.

**2115.** **Bill discounted on faith of promise to accept—Rights of indorsee—Promise made before bill drawn.**—In an action by indorsees of a foreign bill of exchange, against a party who had, before the bill was drawn, given a parol promise to the drawer that he would accept it:—*Held*: such promise did not amount to an acceptance, though it had been communicated to the indorsees, & the bill had been discounted by them on the faith of it.—*BANK OF IRELAND v. ARCHER* (1843), 11 M. & W. 383; 12 L. J. Ex. 353; 1 L. T. O. S. 111; 7 Jur. 379; 152 E. R. 852.

*Annotations*:—*Distd.* Torrance v. Bank of British North America (1873), L. R. 5 P. C. 246. *Reid.* Re Agra & Masterman's Bank, Ex p. Asiatic Banking Corpn. (1867), 16 L. T. 162.

**2116.** ——— **Rights of drawer—Promise by agent of drawee.**—The agent & manager of the business of a London firm who resided in Sweden gave to a merchant there about to draw bills on that firm an assurance that the bills would be accepted, whereon bills of lading of cargoes of timber were

**2112** of first in Mon To to renew. — A firm of bills of & in accordance of the terms of. The in. by the owners, on ground that they had claim their agents exceeding the drawn for:—*Held*: the own entitled to set-off their claims the disbursements.—*LORD BANK v. STEWART & CO.* (1839), Dunt. (Ch. of Sess.) 1327.—*SCOT.* 4. Acceptance amounting to

that they might in Pltfs. drawee draft of foreign shipowner draft of

of side holders for



transmitted to the London firm, & bills of exchange were drawn against them:—*Held*: the assurance, though thus made & acted on, was not, as between the London firm & the foreign merchants, to be treated as equivalent to an acceptance of the bills, so as to vest in the London firm legal rights from the time of such assurance given.—*HOARE v. DRESSER* (1859), 7 H. L. Cas. 290; 28 L. J. Ch. 611; 33 L. T. O. S. 63; 5 Jur. N. S. 371; 7 W. R. 374; 11 E. R. 116, H.

**2117. Promise to pay on receipt of funds—Funds received—Money had & received.**—Agents in England effected a policy of insurance for a correspondent abroad, on which a loss happened. He drew a bill upon them, which was presented to them for acceptance by the indorsee. They said that they could not accept it, having no funds in hand, but that on a settlement with the underwriters it should be paid. The agents received from the underwriters a sum less than the amount of the bill:—*Held*: that might be recoverable from the agents by the indorsee, as money had & received to his use.—*LANGSTON v. CORNEY* (1815), 4 Camp. 176.

**2118. Documents of title sent with bill—Duty of drawee to accept bill or return documents or goods.**—Where a bill of lading & a bill of exchange, to cover the goods included in the bill of lading, are sent in a letter to a vendee of the goods, it is a well understood rule that the bill of exchange must be accepted or the bill of lading cannot be retained.—*SHEPHERD v. HARRISON* (1871), L. R. 5 H. L. 116; 40 L. J. Q. B. 148; 24 L. T. 857; 20 W. R. 1; 1 Asp. M. L. C. 66, H. L.

*Annotations*:—*Apld. Re Yglesias, Ex p. Gomez* (1875), 10 Ch. App. 639. *Consd. Rew v. Payne, Douthwaite* (1885), 53 L. T. 932; *Cahn v. Pockett's Bristol Channel Steam Packet Co.* (1899) 1 Q. B. 643. *Reid. Banco de Lima v. Anglo-Peruvian Bank* (1878), 8 Ch. D. 160; *Mirabita v. Imperial Ottoman Bank* (1878), 3 Ex. D. 184; *Pockett's Bristol Channel Steam Packet Co., Q. B. 61*; *König v. Brandt* (1901), 84 L. T. 748. *Barton, Thompson* (1906), 110 L. T. 667, n. *Annie* *Guaranty Trust Co. of New York v. Hannay, K. B. 623*. *Mentd. Gabarron v. Kneff, Kneff v. son* (1875), L. R. 10 274; (1876), 2 Ch. D. *Ex p.*

, further, SALE OF

to accept.]—See Part VI., Sect. 7,

**Securities for bills.**—See Part XXIII., post; **BANKERS & BANKING**, Vol. III., pp. 250–253.

### 8.—LIABILITY OF PERSON AGREEING TO PROVIDE FUNDS TO MEET INSTRUMENT.

, also, Sect. 1, ante.

**2119. Collateral writing—Promise to pay on demand.**—A promise to pay on demand bills,

ultimately to enemy ports. The goods were covered by bills of exchange drawn in Calcutta on the firms with their addresses given in the bills as London. They were then discounted with & indorsed to ptfr. in Calcutta. The bills of exchange reached London, one on the day war was declared, & the others on a date subsequent thereto. The indorsees duly presented the bills for acceptance. They were returned dishonoured by the drawee:—*Held*: as the acceptance of the bills by the

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### PART XIII. SECT. 8.

2120.

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their reaching maturity, given, not upon the of the bills themselves, but by a collateral writing, is binding to all intents & purposes on the giver of it.—*OVEREND, GURNEY & Co. (LIQUIDATORS) v. ORIENTAL FINANCIAL CORPN. (LIQUIDATORS)* (1874), L. R. 7 H. L. 348; 31 L. T. 822, H. L.; *affy. S. C. sub nom. ORIENTAL FINANCIAL CORPN. v. OVEREND, GURNEY & Co.* (1871), 7 Ch. App. 142, C. A.

*Annotations*:—*Bank* (1880), 6 A 1 Q. B. D. *North & South Wales Bank v. Redman* (1889), 41 Ch. D. 1; *Clark v. Hurley* (1891), 7 T. 1; (1894) A. C.

**2120. Funds to be provided—By drawer—Accommodation acceptance—Measure of damages.**—*HARDCASTLE v. NETHERWOOD*, No. 2181,

**2121. ——— Funds provided—Bankruptcy of acceptor—Measure of damages.**—*PREHN v. ROYAL BANK OF LIVERPOOL*, Nos. 2220, 2256,

**2122. ——— By one indorsee partner—Accommodation acceptance—Debt by indorser to partnership—Liability of acceptor.**—A bill was indorsed to A. & B., partners, in respect of a debt due to them from the drawer & indorser. The bill having been accepted by debt. at A.'s request, & A. having also engaged to provide for the bill at maturity:—*Held*: the assignees of A. & B. were not entitled to recover against debt., though B. was not privy to the & engagements of A.—*Stark. 60, N. P.*

**2123. ——— By indorser—Accommodation acceptance—Promise not in writing—Statute of Frauds, 1677 (c. 3), s. 4.**—D. wanting money, he & debt. applied to ptfr. to draw a bill, to be accepted by D. & indorsed by debt., & debt. promised ptfr. that he should not be called upon. The jury found that D. & debt. were both principals in the transaction:—*Held*: ptfr., having paid the bill, was entitled to recover the amount, without proof of a in writing under the above sect.—*BATHON v. (1859), 4 H. & N. 739; 28 L. J. Ex. 327; 157 E. R. 1032.*

*Mentd.* 1010; *Mountstephen v. (1871), 25 L. T. 755; K. B. 47.*

**2124. ——— By joint stock bank of more than six persons—Transaction with bank in Canada.**—A London joint stock bank, consisting of more than six partners, entered into an agreement with a bank in Canada, that P., manager of the London bank, but not a partner therein, should accept bills drawn on him by the Canada bank, payable at less than 6 months from the acceptance thereof, & that the London bank should provide funds for the due payment of such bills, the money transactions arising thereupon being, in the the two banks, to be treated between the banks:—*Held*: (1) the acceptance of such bills, in execution of such was unlawful, regard being had to the

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under sanction of the money to the the debt, promising to protect the note or to repay, relief was given in chancery against the corporation upon a breach of the promise.—*BURNHAM v. PETERBOROUGH* (1880), 5 Gr. 366.—CAN.

L. ——— *Mentd.*—*BLAKE v. HARVEY* (1852), 2 C. P. 310.—CAN.

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**8.—Liability of person agreeing to provide funds to meet instrument. Sect. 9: Sub-sect. 1.]**

Acts in force respecting the Bank of England; (2) such acceptances would not be lawful, even if the London bank, at the time of the acceptances, had in hand funds on account of the bank in Canada equal to the amount of the bills so accepted; (8) the acceptances of such bills would not be lawful, if the London bank had not, at the time of the acceptances, any funds in hand belonging to the bank in Canada, but the bills were accepted on the credit of a contract by that bank to remit funds to meet such acceptances before the bills became payable.—**BOOTH v. BANK OF ENGLAND** (1840), 6 Bing. N. C. 415; 7 Cl. & Fin. 509; West, 298; 1 Scott, N. R. 701; 4 Jur. 762; 133 E. R. 160, H. L.; *affg.* 8. C. *sub nom.* **BANK OF ENGLAND v. BOOTH** (1837), 2 Keen, 466.

**2125. Oral evidence of agreement—Admissibility.]**

—To an action by payee against drawer of a bill of exchange, payable 12 months after date, deft. pleaded that he drew the bill & delivered it to pltf. for the accommodation of the acceptor & as surety for him, that, at the time deft. so drew & delivered the bill to pltf., it was agreed between pltf. & deft. & the acceptor that the acceptor should deposit with pltf. certain securities, to be held by pltf. as security for due payment of the bill, & that, in case the bill should not be duly paid, pltf. should sell the securities & apply the proceeds in liquidation of the bill, & that, until pltf. should have so sold the securities, deft. should not be liable to be sued on the bill. The plea then went on to aver that the securities were deposited with pltf. by acceptor, but that pltf. had not sold but still held them:—*Held*: oral evidence of the agreement alleged in the plea was not admissible, inasmuch as it contradicted or varied the express written contract on the face of the bill.—**ARREY v. CR** (1809), 1 L. R. 5 C. P. 37; 39 L. J. C. P. 9; 21 L. 327; 18 W. R. 63.

*Annotations*:—**Consol.** *Stott v. Fairlamb* (1883), 52 L. J. Q. B. 187. *Ald.* *New London Credit Syndicate v. Neale*, B. 187. *Reid.* *Hitchings & Coulthurst Co. v. Northern* of K. B. 907.

& conditions affecting delivery negotiation generally, *see* Part VIII., Sect. 4,

**9. LIABILITY OF TRANSFEROR BY DELIVERY.****1.—ON**

1882 Act, s. 58 (1) (2).

**Not liable on bill—Bill discounted.]—**

A mere discount of a bill, without the indorsement of the party who receives the money, does not give the holder of the bill any claim against such party. —*p.* **ROBERTS** (1789), 2 Cox, Eq. Cas. 171; 30 L. 78, L. C.

**2127.** — Subsequent promise to pay *nudum pactum*.—Where the holder of a bill of exchange desired A. to get it discounted, but positively refused to indorse it, & A. delivered it to B. for the same purpose, informing him to whom it, & B., finding that he could not dispose of without indorsing it, was prevailed upon to do by A.'s telling him that would indemnify him, but the indorsee took it upon the credit of

the names on the bill without any knowledge of the real owner:—*Held*: although such original holder afterwards promised to pay the bill, yet such promise could support an action brought against him by the indorsee, it being *nudum pactum*, for as A. was a special agent under a limited authority, he could not bind his principal by any act beyond the scope of such limited authority.—**FENN v. HARRISON** (1790), 3 Term Rep. 757; 100 E. R. 842; *subsequent proceedings* (1791), 4 Term Rep. 177.

—*Distd.* *Fyddell v. Clark* (1796), 1 Esp. 447. *Reid.* *Jones v. Ryde* (1814), 5 Taunt. 488; *Smith v. Mercer* (1815), 6 Taunt. 76; *Udell v. Atherton* (1861), 7 H. & N. 172. *Mentd.* *Lyon v. Mells* (1804), 1 Smith, K. B. 478; *Whitehead v. Tuckett* (1812), 15 East, 400; *Re Acraman*, *Ex p.* *Bushell* (1844), 3 Mont. D. & De G. 615; *Coleman v. Riches* (1855), 16 C. B. 104; *Collen v. Gardner* (1856), 21 Beav. 540; *Brady v. Todd* (1861), 9 C. B. N. S. 592; *Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184; *Baines v. Ewing* (1866), 4 H. & C. 511; *Baldry v. Bates* (1885), 52 L. T. 620; *Royal Albert Hall Corpn. v. Winchill* (1891), 7 T. L. R. 362.

*See, further*, Part XI. Sect. 11, *ante*; **BANKERS & BANKING**, Vol. III., pp. 257–261.

**2128.** —.]—A person giving cash for a bill, without the indorsement of the person from whom he takes it, cannot prove it under his bkpcy.—*Ex p.* **SHUTTLEWORTH** (1797), 3 Ves. 368; 30 E. R. 1057.

*Annotation*:—*Expd.* *Fairclough v. Pavla* (1854), 9 Exch. 690.

**2129.** — Not entitled to notice of dishonour.]—**VAN WART v. WOOLLEY**, No. 1641, *ante*.

**2130.** Not liable to refund money received—Bill discounted.]—The discount of a bill payable to bearer cannot, if payment is refused, maintain an action for the money he advanced against the person to whom he advanced it, unless such person indorsed the bill.—**BANK OF ENGLAND v. NEWMAN** (1699), 1 Ld. Raym. 442; 1 Com. 57; 12 Mod. Rep. 241; 91 E. R. 1193.

*Annotations*:—*Reid.* *Hartop v. Hoare* (1743), 1 Wils. 8; *Emly v. Lye* (1812), 15 East, 7; *Evans v. Whyte* (1829), 3 Moo. & P. 130.

**2131.** Liable on express contract to pay on default.]—Deft., on a Friday, took a note of a goldsmith, payable to B. for £454 18s. 3d., to the Bank of England, & asked C., the cashier there, to give him a specie bank note payable to B. for A.'s note. C. refused, but told deft. that if he would promise to pay the bank the £454 18s. 3d., in case A. did not pay the note, he would give him a specie bank note payable to himself for the sum, to which deft. agreed, & C. then accepted A.'s note, & gave deft. a specie bank bill of £454 18s. 3d. On Monday, A.'s note was sent to him to be paid, but he refused to pay it. In the mean time deft. had given the bank note to J. for a debt owing by him to J., & J. received the £454 18s. 3d. of the bank. In *indebitatus assumpsit* brought by the bank against deft. for £454 18s. 3d. lent to deft. by pltf., & another count for £454 18s. 3d. laid out at the request of deft. for the use of deft.:—*Held*: the action was not maintainable, as this was not money lent, nor laid out for the use of deft., but it was a buying of A.'s note with a warranty of it from deft., & pltf. might well maintain a special action, but not a general *indebitatus assumpsit*.—**BANK OF ENGLAND v. GLOVER** (1702), 2 Ld. Raym. 753; 92 E. R. 8.

**2132.** Liable to party employed to discount who indorses.]—A. employed B. to get bills, which he had not indorsed, discounted for him. B., in order



## PART XIII.—LIABILITY OF

to effect the discounting, indorsed them, & paid the money so raised over to A.:—*Held*: A.'s estate must relieve B. from the liability incurred by the indorsements.—*Re NUNN & BARBER, Ex p. ROBINSON* (1817), Buck, 113, L. C.

**Not liable on consideration.**—Where goods were sold "to be paid for by E.'s bill on P. without recourse on the buyer in case of its not being paid":—*Held*: although the buyer then knew the bill to be worth nothing, he was not liable to an action of *indebitatus assumpsit* for the value of the goods.—*READ v. HUTCHINSON* (1813), 3 Camp. 352, N. P.

*Annotations*:—*Conrad, Bristol v. Willmore* (1823), 1 B. & C. 514. *Mentd. Selway v. Fogg* (1839), 5 M. & W. 83; *Rum- r. N. E. Ry. Co.* (1863), 14 C. B. N. S. 641.

**2134. — Guarantee.**—Deft. guaranteed the payment of gold, with which plff. should supply a goldsmith for the purposes of his trade. Plff. discounted bills for the goldsmith, & gave him for them partly gold, & partly money. The gold was applied to the goldsmith's trade, but the goldsmith did not indorse the bills:—*Held*: deft. was not liable under his guarantee for the gold so furnished.—*EVANS v. WHYLE* (1829), 5 Bing. 485; 3 Moo. & P. 130; 7 L. J. O. S. C. P. 205; 130 E. R. 1148.

*Annotations*:—*Mentd. Hargrave v. Snice* (1829), 3 Moo. & P. 573; *Bonar v. McDonald* (1850), 3 H. L. Cas. 226.

**2135. Worthless bank notes.**—Plff. deposited with defts., a banking co., £80, consisting partly of certain notes of a country bank, payable either at that bank or in London, & representing £65. The co. gave a receipt as follows: "Received of M. £80, for which we are accountable. £80, at 3 per cent. interest, with 14 days' notice." The co. sent the notes, on the same day, to their agents in London, who presented them on the following day, when they were dishonoured. The agents sent them back by that evening's post to the co., who, on the following day, gave notice of dishonour to plff., & on plff.'s giving 14 days' notice of withdrawal, tendered the notes back, which plff. refused. The co. refused to pay the amount of the notes. The country bank, which was about five miles from the office of the co., had stopped payment from the close of the day on which the notes were deposited:—*Held*: plff. could not recover the amount of the notes from the co., either as money lent or as money had & received.—*TIMMINS v. GIBBINS* (1852), 18 Q. B. 722; 21 L. J. Q. B. 403; 19 L. T. O. S. 181; 17 Jur. 378; 118 E. R. 273.

r. 1 E. & B.

**Worthless cheque.**—A cheque drawn upon the G. branch of a banking co. by H., who kept an

account at that branch, was presented by deft. at the B. branch of the same banking co., where it was cashed in the usual way across the counter, & the same day sent to G., but H. having no funds there, it was returned to the B. branch, who gave notice of dishonour to deft., H. had no account with the B. branch, & the two branches were distinct in respect of the accounts kept there, & issued cheques denoting the particular branch upon which they were drawn:—*Held*: this did not amount to payment of the cheque by the B. branch, as the bankers of H. or on his credit, but on the credit of deft., & the cheque proving to be worthless, the bank was entitled to recover back the money paid.—*WOODLAND v. FEAR* (1857), 7 E. & B. 519; 26 L. J. Q. B. 202; 29 L. T. O. S. 106; 3 Jur. 18. 587; 5 W. R. 624; 119 E. R. 1339.

*as*:—*Mentd. Re Brown v. L. & N. W. Ry* 4 B. & S. 328; *Prince v. Oriental Bank* (1857), 3 App. Cas. 325; *Fiddling v. Corry* (1897), 77 L. T. 453; *R. v. Lovitt*, [1912] A. C. 212.

**2137. Effect of laches—Bank notes not presented.**—*Failure of bank.*—On Wednesday, Nov. 28, A. bought goods from B., which he paid for in country bank notes. On Monday the 28th B. requested A.'s servant, as a favour, to exchange the notes for money, which he did. On the same day the bank stopped payment; A. heard of it on Tuesday, & on Wednesday wrote to B., informing him of the failure of the bank, & desiring him to exchange the notes, but the notes were not produced or tendered to B. until long afterwards, nor were they ever presented at the bank. In an action brought by A. against B., to recover the value of the notes:—*Held*: A. was not entitled to recover.—*r. LANGFORD* (1833), 1 Cr. & M. 637; 3 Tyr. E. R. 555.

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L. R.

Oliver

10 Q. B.

**2138. —**—On Saturday Jan. 19, plff. gave change for a £5 bank note of P. & Co.'s bank, to deft., at his request. On Monday morning, the banking-house of P. & Co.'s was for two hours & then closed, & the partners no bkpts. No payments were made, & the jury gave an opinion that if the note had been presented, it would not have been cashed. The note was not in fact presented, but on Monday, plff. sent it to deft., & requested to have his money returned, & deft. at first promised to return it, but afterwards refused. In an action of debt on money had & received:—*Held*: the obligation on the holder of a note in such case was to give prompt notice to the person from whom he received it, of the failure of the bank, & to tender the note

### XIII. 9, SUB-SECT.

Plff. sold bags to deft. & sent the cheque of 1. for whom deft.

a

for the default of note.—*Howe v. C* 8 B. C. 161.—*CAN.*

in not of

2137. Effect of of forged currency note.

by M in by deft. when the

was

h. Whether liable for wrongful use of diligence by transferee.)—The indorser for value of a bill of exchange, who has without re-indorsement put the indorser into possession of the bill in order that he may do diligence thereon, is not liable in damages, should the use of diligence turn out to be wrongous, unless he was aware, when he gave the indorser the bill, of the circumstances which made the use of

of the note is so great as to damage the payer of it in his or in his power

1919, 44 O. L. ; 15 O.

8.—

g. N

Plff.

his note. defence in an action brought the original com

O. C. I.—IND.

of  
[1 & 2. Sect. 10.]

to him, & pltf. had done all that he was bound to do, & was entitled to recover, although there had been no presentation of

303 7 Jur. 745. L. 12 L. J.

r. Oliver r. Clarke 1056.

**2139. — Delay in**

drawn by F. on a banker at Bath was cashed for by a branch of the N. bank at Malmesbury, on Tuesday, Mar. 28. The same day it was forwarded to the principal N. bank at Melksham, twelve miles from Bath & on Friday, the 31st, it was not in time to give the N. bank any claim against deft. — *MOULE v. BROWN* (1838), 4 Bing. N. C. 200; 1 Arn. 79; 5 Scott, 7 L. J. C. P. 111; 2 Jur. 277; 132 E. R. 790.

*Mentd.* Mullick v. Luchmieschund (1854), 9 Moo. P. C. C. 46; Hare v. Henty (1854) 10 C. B. N. S.

**2140. — Bankruptcy of maker of note.]**

—To a declaration for goods sold, deft. pleaded that he transferred to pltf. promissory notes made by L. & Co., etc., which pltf. accepted on account of the debt, & that pltf. did not, within a reasonable time, present them. Replication, that, on a day before the transfer, & without the knowledge of pltf., L. & Co. "became & were bkpts. & that they "continued such bkpts.," & unable to pay the notes, that afterwards, & a reasonable time for presentment, pltf. the bkpcy., & that, within a reasonable time, such discovery, etc., he gave deft. of the premises, & offered to return the Rejoinder, that pltf. did not give the notice till after the expiration of a reasonable time for presenting the notes for payment:—*Held*: pltf. was only bound to give such notice within a reasonable time after he acquired the knowledge, & not necessarily before the expiration of time for presentment. — *ROBSON v. OLIVER* (1847), 10 Q. B. 704; 16 L. J. Q. B. 437; 9 L. T. O. S. 197; 11 Jur. 1050; 118 E. R.

, further, Part XII., Sects. 2 & 4.

ON

Act,

& FRAUD

**2141. That bill is what it purports to**  
**forgery.**—If a banker of a supposed acceptor of a forged bill discount it for the agent of one of the indorsees on the discovery of the forgery the indorser may recover back the money on the bill, notwithstanding he was the banker of & might be taken to know

C. & P. 197; Ry. & M. 40, N. P.

—The vendor of a bill of exchange, though no party to the bill, is responsible for its genuineness, & if it turns out that the name of one of the parties is forged & the bill becomes valueless, he is liable to the vendee, as upon a failure of consideration.

Defts., bill-brokers, having received from A. a bill of exchange drawn & indorsed by A., for the purposes of being discounted, took it to pltf., money-lenders, with whom defts. had previously had similar dealings, & acting as principals, defts. procured the bill to be discounted by pltf., but without indorsing or guaranteeing it, though asked by pltf. to do so. The rate of discount charged by defts. to A. exceeded that charged by pltf. to defts. The acceptance to the bill turned out to have been forged by A., & the bill proved valueless:—*Held*: pltf. were entitled to recover the sum paid to defts. upon the discount of the bill as upon a failure of consideration. — *GURNEY v. WOMERSLEY* (1854), 4 E. & B. 133; 24 L. J. Q. B. 46; 24 L. T. O. S. 71; 1 Jur. N. S. 328; 3 Q. L. R. 3; 119 E. R. 51.

—*Consd.* Kennedy v. Panama, etc., Mail Co. L. R. 2 Q. B. 580. *Reid.* Re Lawrence, Mortimore & Schrader (1861), 4 L. T. 184; Pooley v. Brown (1862), 11 C. B. N. S. 566. *Mentd.* Royal Exchange Assoc. v. Moore (1863), 2 New Rep. 63; Azémar v. Casella (1867), L. R. 2 C. P. 677.

**2143. — Foreign bill.]**—When an unstamped bill, purporting to be drawn at Sierra Leone, but really drawn in London, was sold, though without knowledge of the defect on the part of the vendor:—*Held*: there was an implied warrant that it was a foreign bill, & the purchaser was entitled to recover back the money paid. — *GOMPERTZ v. BARTLETT* (1853), 2 E. & B. 849; 23 L. J. Q. B. 65; 22 L. T. O. S. 99; 18 Jur. 266; 2 W. R. 43; 2 C. L. R. 395; 118 E. R. 985.

*Annotations.*—*Consd.* Alken v. Short (1856), 1 H. & N. 210; Hall v. Conder (1857), 2 C. B. N. S. 22; Kennedy v. Panama, etc., Mail Co. (1867), L. R. 2 Q. B. 580; Jolliffe v. Baker (1883), 11 Q. B. D. 255; Leeds & County Bank v. Walker (1883), 11 Q. B. D. 84. *Reid.* Gurney v. Womersley (1854), 4 E. & B. 133; Re Lawrence, Mortimore & Schrader (1861), 4 L. T. 184; Pooley v. Brown (1862), 11 C. B. N. S. 566; Raphael v. Burt (1884), Cab. & El. 325. *Mentd.* Azémar v. Casella (1867), L. R. 2 C. P. 677; Re Addlestone Linoleum Co. (1887), 37 Ch. D. 191.

**2144. — Effect of laches.]**—Pltf., in Apr., purchased of deft., without recourse, a bill to be drawn by A. in Brussels upon B. Through the default of both parties, the adhesive stamp was not cancelled at the time of the transfer, pursuant to Stamp Act, 1854 (c. 83), s. 5. In Apr., 1861, B. became bkpt., & proof of the bill against his estate was rejected, in consequence of the neglect to cancel the stamp, & the name of A. turned out to have been forged. Pltf. then called upon deft. to return him the price he paid for the bill, as upon a failure of consideration:—*Held*: (1) the non-observance of the requirements of the Act disabled pltf. from maintaining the action; (2) at all events, he was precluded by his own laches from recovering back the he had paid for the bill. — *POOLLEY v. BROWN* (1862), 11 C. B. N. S. 566; 31 L. J. C. P. 750; 8 Jur. N. S. 10 W. R. 345; 142 E. R. 917.

**2145. — Altered bank note.]**—A Bank of England note, which had been materially altered in number & date, was paid to pltf. for value by deft., both parties believing the note to be good. Pltf. paid away the note, which was afterwards presented at the Bank of England, where the



was perceived, & payment was ———  
The note was returned to pltf. as a bad one, & after a fortnight spent in tracing the note to deft., pltf. demanded payment of it from him, & on July 21, 1882, sued him for the amount:—*Held*: pltf., having received from deft. a worthless note on which no one could be sued, were entitled to recover in the action for money had & received.—

*BANK v. WALKER* (1883), 11 Q. B. D. 84; 52 L. J. Q. B. 590; 47 J. P. 502.

*Annotation*.—*Montd. Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49.

**2146. Not aware that bill valueless—Forged navy bill.**—A person who discounts a forged navy bill for another, who passed it to him without knowledge of the forgery, may recover back the money as had & received to his use upon failure of the consideration. So, a person who receives forged bank notes in payment.—*JONES v. RYDE* (1814), 5 Taunt. 488; 1 Marsh. 157; 128 E. R. 779.

*Annotations*.—*Appl. Bruce v. Bruce* (1814), 5 Taunt. 495; *Gompertz v. Bartlett* (1853), 2 E. & B. 849. *Dist. Gurney v. Womersley* (1834), 4 E. & B. 133. *Reid, Smith v. Mercer* (1815), 6 Taunt. 76; *Wilkinson v. Johnson* (1824), 3 B. & C. 428; *Cocks v. Masterman* (1829), 9 B. & C. 902; *Westropp v. Solomon* (1849), 19 L. J. C. P. 1; *Hall v. Conder* (1857), 3 C. B. N. S. 22; *Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184; *Leeds & County Bank v. Walker* (1883), 11 Q. B. D. 84.

**2147. — Forged victualling bill.**—A forged victualling bill passed from deft.'s possession, through pltf.'s hands, to the Bank of England, who presented the bill at the victualling office, where it was paid. On discovery of the forgery, the victualling office were paid by the Bank of England, & the banks were paid by pltf., the difference between the apparent & the real value of the bill:—*Held*: although the full apparent amount of the bill had been paid by the office on presentment, pltf. was entitled to recover what he had paid from deft.—*BRUCE v. BRUCE* (1814), 5 Taunt. 495; 1 Marsh. 165; 128 E. R. 782.

—*Consd. Smith v. Mercer* (1815), 6 Taunt. 76; *v. Johnson* (1824), 3 B. & C. 428.

**2148. — Forged acceptance.**—An agent applied to a banking co., on several occasions, to discount bills drawn by his principal, & at the commencement of the transactions informed the co. who the drawer & acceptors were, & inquired whether the co. would discount the bill without

requiring the agent to indorse it. They agreed to do so in that & other instances, but upon some of the bills required & obtained the agent's indorsement. The acceptances turned out to have been forged by the principal, of which fact the agent was wholly ignorant. On the agent becoming bkpt., & there being nothing to show that he had not handed over the proceeds of the bills to the principal, or that those proceeds were in such a position that they could be recalled:—*Held*: the co. could not prove upon the bills which the agent had not indorsed.—*Re BOURNE, Ex p. BIRD* (1851), 4 De G. & Sm. 273; 20 L. J. Bcy. 16; 17 L. T. O. S. 808; 15 Jur. 894; 64 E. R.

Part Sect. Part  
Sect. 2.

**2149. — Altered acceptance**  
*v. MOORE, No. 2087, ante.*

## 10.—LIABILITY OF MAKERS OF JOINT AND SEVERAL PROMISSORY NOTES.

1882 Act, s. 85 (1).

**2150. In general.**—A declaration against a party, as maker of a promissory note, is supported by production of a joint & several promissory note made by him & another person.—*BULMER v.* 5 Jur. N. S. 1317.

**2151. —**—A joint & several promissory note was signed by two members of a firm, by the firm, by several other persons. The firm having some bkpt., the holder of the note carried in proofs against the joint estate of the firm, & against the separate estates of the two partners who had signed the note:—*Held*: the holder was entitled to prove against, & receive dividends from, both the joint estate of the firm & the separate estates of the two partners who had signed the note.—*Re JEFFERY, Ex p. HONEY* (1871), 7 Ch. App. 178; 41 L. J. Bcy. 9; 25 L. T. 728; 20 W. R. 223, L. J.

*Annotations*.—*Reid, Simpson v. Henning* (1873), L. J. 10 B. 406. *Montd. Re Welch, Ex p. Stone* (1873), 8 App. 914; *Hoare v. Oriental Bank (Corp.)* (1877), 9 & Longman, *Ex p. Berner &*

&

Vol. IV., pp. 445

### PART XIII. SECT. 9. SUB-SECT. 2.

**2146 l. Not**

—A  
a forged currency note in  
payment is not, in order to  
the forgery, bound to give  
of it to the person  
from whom he received the forged  
rule relating to forged accept-  
bills of exchange not applying.  
*GIRDHARLAL PATE*  
(1870), 7 Bom. O. C. 1.—*IND.*

### PART XIII. SECT.

**2150 l.**

of

the

(1817).

a

& in

—CAN.

**2150 III. —**—The joint makers of a promissory note, drawn up in the form "I promise," etc., are jointly & severally bound.—*HERN DAVID CONGREGATION OF ROMANIAN JEWS v. BACKMAN* (1906), Q. R. 31 B. C. 23.—*CAN.*

**k. —**—Makers with separate interests.—The jury having found defts. joint promisors on a promissory note:—*Held*: they were liable, although the interest of each in the purchase of a vessel might be separate.—*MAYHEW v. MANNING & McLEAN* (1870), 3 Han. 23.—*CAN.*

**l. —**—Joint note.—Failure of action against one is failure against both.—*HORNER v. KERR* (1850), 6 A. R. 36.—*CAN.*

**m. —**—By husband & wife.—A promissory note here to be made by, & to bind, a wife & her husband:—*Held*: the contract as regards the wife being a nullity, as regards the husband, the note being

1, 6 U. C. R.

only  
al. judgment could only for  
one half the amount.—  
*Dix* (1906), 8 Q. P. R.  
*CAN*

**e. —**—Note made by more  
two persons.—Deft. with others signed  
the following. his subscription being  
\$100: "We the undersigned do  
hereby severally promise & agree to  
pay to pltf. the sums set opposite  
our respective names, for the purpose,  
etc."—*Held*: the instrument was the  
several promissory note of each sub-  
scriber.—*THOMAS v. GRACE* (1863), 15  
C. P. 462.—*CAN.*

**p. —**—None being infants.—  
A promissory note was made by  
fifteen defts., two of whom were  
infants. The note was on its face a  
joint & several promise to pay  
*Held*: although two of the makers  
were infants, the other makers were  
liable.—*PARK v. POLLARD* (1911), 16  
W. L. R. 451.—*CAN.*

**q. —**—Not signed by all.—  
A promissory note was made by fifteen  
y 2

## 324 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

### Sect. 10. Liability of makers of joint and several promissory notes.

**2152. Contribution—Discharge of sureties.**—A creditor, whose debt is secured by a warrant of attorney, having received promissory notes from debtor & two sureties, & afterwards entered up judgment & taken the goods of debtor, &, without the knowledge of the sureties, withdrawn the execution, has discharged the sureties; but a subsequent promise to pay the debt by one surety, knowing that the execution has been withdrawn, renews his liability.

Right of contribution between co-sureties, whether by separate instruments, or by the same.  
—MAYHEW v. CRICKETT (1818), 2 Swan.  
; 1 Wils. Ch. 418; 36 E. R. 585, L. C.

*Apld.* Smith v. Winter (1838), 4 M. & W. 454.  
Newton v. Charlton (1853), 2 Drew. 333; Pearl v. m (1857), 21 Beav. 186; Polak v. Everett (1876), 1 Q. B. 669; *Re* Wolmershausen, Wolmershausen v. Wolmershausen (1890), 62 L. T. 541. *Mentd.* Wade v. Cooke (1827), 2 Sim. 155; Spaight v. Cowne (1863), 1 Rep. 550; Phillips v. Foxall (1872), L. R. 7 Q. B. r. Jackson (1882), 10 Ch. D. 615.

**2153. Partnership—Separate transaction.**  
The right to enforce contribution between joint makers of a promissory note by an action at law is not affected by the fact that the makers were co-partners together with others, & that the note was given to secure money raised for the purposes of the partnership.

defta. Pltfs. alleged that defts. pro-  
sed the amount of the  
If the note was on its  
joint & promise to pay:—  
Held: to show that all  
ld not  
from recovering again  
shown to have signed it.—PARK v.  
POLINSKY (1911), 16 W. L. R. 437. —  
CAN.

r. — — — — — A  
to  
from the others.  
(1914), 7 O. W. N. —CAN.  
—H. & Co. as al  
for

to  
le,  
by you  
in  
of  
H.

that, although the note  
as collateral security for the  
indebtedness, they,  
only liable for a pro  
share: *Held*: as the note was collateral  
security for the whole indebtedness,  
& there still remained nearly \$1,100  
due, defts. contention failed.—NIXON  
v. HILL (1903), 5 O. W. R. 133.—CAN.

L. — Security given by one  
joint maker—Right of co-maker to  
object that security realized at under-  
value.—Where an obligant under a  
promissory note subsequently con-  
veyed heritable property in security of  
the debt:—*Held*: a co-obligant in the  
promissory note, who was not a  
contingent, had no title to challenge the  
sale of the security subjects on the  
ground that the price was inadequate,  
& by this means to avoid liability for  
the debt.—SCOTT v. DAVIDSON, (1914)  
S. C. 791; 51 No. L. R. 795.—SCOT.

w. Declaration  
on a note to  
by defts. under the name of A. B. &  
Plea by A. B., that he did not  
that defts. being sued as  
joint makers, it was no answer for one  
of them to say that he did not make  
the note:—*Held*: the plea was  
—CITY BANK v. KELLAR (185  
C. P. 508.—CAN.

x. — — — — — A. & B.  
sued on a promissory note passed by  
them to pltfs. A. pleaded separately  
that he did not make the note. To  
the other causes of action, alleging a  
joint liability, A. took defence by  
traversing his individual liability:—  
*Held*: a defence framed in such  
manner was calculated to embarrass.  
—DURRY v. HOGNEY (1860), 13 Ir. Jur.  
20.—IR.

**2153.1. Contribution — Directors.**—  
The ordinary rules of the law merchant  
applicable to the case of a pro-  
note made by directors of an  
co., in favour of one of  
their own number who advances  
funds for the purposes of the co. The  
intent of the transaction

to have been the intention, if the co.  
is unable to respond, the makers of  
the note must as between  
an equal share, & if  
of the note is not  
his share must  
the  
N. & R. 416; 44 D. L. R.

j.)—Pltf. purchased land  
in his own name & gave a mte.  
for the purchase money, & also  
joint & several promissory notes of  
& deft. After the p

to be in consideration of \$150 paid to  
pltf. No money was paid on the  
execution of the deed from pltf. to  
deflt. Pltf., having afterwards paid  
of the notes,

A., B., & C., being shareholders with other adven-  
turers in a Cornish mine, conducted on the cost  
book principle, for the purpose of raising money  
for carrying on the mine, joined in a joint &  
several promissory note for £500, the proceeds of  
which were applied to the working of the mine  
A. having subsequently paid the amount to the  
holder of the note:—*Held*: an action for money  
paid was maintainable by him against the other  
makers of the note, this not being a partnership  
transaction.—SEDGWICK v. DANIELL (1857),  
H. & N. 319; 27 L. J. Ex. 116; 157 E. R. 132.

**2154. — Right of proof.**—One of several  
makers of a joint & several promissory note in  
favour of a third party having paid the debt  
secured by the note, may not prove upon the note  
against some of the co-makers under their bkpcy.  
His remedy is by way of contribution from each  
of his co-contractors *pro portione*.—*Re* VINER,  
*Ex p.* SCHENK (1864), 10 L. T. 44.

**2155. Accommodation note**—One joint maker &  
payee co-sureties.]—A husband & wife were parties  
to a promissory note as makers, & the husband's  
brother was the payee, who indorsed the note for  
the accommodation, as he believed, of both hus-  
band & wife. In fact, the wife only signed the  
note for the accommodation of her husband. The  
note having been dishonoured:—*Held*: the wife  
& the payee were co-sureties, & as between them

brought an action for contribution on  
the ground that the purchase was made  
for the joint interest of pltf. & deft.,  
& deft. was a principal & not a surety  
on the note:—*Held*: it might be  
inferred from the circumstances that  
the original purchase was on joint  
account.—READ v. MCCLELLAN (1848),  
1 All. 81.—CAN.

b. — — — — — Counterclaim.]—Where,  
in an action by one joint maker against  
another for contribution, the judge  
gave judgment for pltf. & failed to  
take deft.'s counterclaim into con-  
sideration:—*Held*: the case must be  
referred back to the judge to take the  
accounts between the parties.—DUNN  
v. TOMIN (1905), 2 W. L. R.  
CAN.

money paid on a promissory note, on  
which pltf. was joint maker with deft.,  
given for the value of goods which, as  
pltf. knew, were to have been smuggled  
into the Province, could not be re-  
covered.—ANGUS v. HOUSE  
5 O. S. 642.—CAN.

A. who had joined C. in passing a joint  
& several promissory note to W., who  
creditors of the latter, took up the  
note by passing to W. the joint note  
of himself & his  
latter note became due, but, after the  
death of C., brought *assumpsit* against  
the administratrix of C. for the amount  
of the first note, as money paid by him  
to the use of intestate:—*Held*:  
although at the time of the declaration  
pltf. had not paid any money on foot  
of the note, the action was well brought,  
notwithstanding.—M'KENNA v. HAN-  
NERT (1849), 13 L. L. R. 206; 1 Ir. Jur.

of two joint  
makers of a promissory note gave a  
p. in which his brother joined  
his co-surety in the original note for  
one half of the amount:—*Held*  
fact  
by



the wife was only liable for half the amount of the note.—*GODSELL v. LLOYD* (1911), 27 T. L. R.

**Discharge of parties to joint & several notes.]**  
see Part XIV., Sect. 9,

## SECT. 11.—MEASURE OF DAMAGES.

### SUB-SECT. 1.—AMOUNT OF INSTRUMENT.

1882 Act, ss. 57 (1) (a), 72 (4).

**2156. Bill given as indemnity—Overseers of poor.]**—Overseers of the poor should proceed to take indemnity in cases of bastardy, from the putative father, under 6 Geo. 2, c. 31, s. 1, & cannot commute the same for a specific sum; & all notes & all other securities given for payment of money absolutely, in such cases, are, in law, only to be considered as mere contracts of indemnity, upon which the payee or obligee can recover only such sum as the parish shall have expended.—*COLE v. GOWER* (1805), 6 East, 110; 2 Smith, K. B. 246; 102 E. R. 1220.

*dicta*:—*Mentd. Hodgson v. Williams* (1808), 6 Esp. Gilbert v. Sykes (1812), 16 East, 150;

could not be  
CIVILITY ( I. L. T. Jo. 285.—IR.

missory note negotiable  
to S. for  
out of

them jointly for Rs. 1,480, being

etc. That  
against who gave S. another  
for the whole amount  
due under &  
receipt which that the

by S. as payment of  
due under the decree. The note  
not, at the date of the suit,  
paid. Pltf. sued the other joint  
of the original promissory note for  
contribution:—*Held*: he had no  
of action at the date of suit.—*NARAYANAMUTHU AYYAR v. MUTHU PILLAI* (1902), 1 L. R. 26 Mad.

C. & D., shareholders in a co., by  
way of accommodation to it, become  
jointly liable for a promissory note, &  
at maturity it is paid out of the pro-  
ceeds of a second note signed by A. &  
B., but not by C. & D., which is ultra

of creditor & debtor arises  
A. & C. & the former cannot  
of C.'s  
r. *LEVILLER*  
K. B. 515.—CAN.

### XIII. SECT. 11.

#### 1. Note given for part of

of land sold to B. for £1,700, to be  
follows: £150 cash on the  
of the contract, £150 cash on

promissory  
B. to be then  
deposit, &  
but before  
with the  
ance of signed

of

of the  
the the pro-

missory

of the contract for the  
& C. on his  
the vendor was  
on the  
to the difference in  
on the *SHAW v. BROADBENT*  
CARTER ( 17 V. L. R. 760.  
AUS.

m. Bill of  
from the  
at Greenwich Hospital, to  
S., the agent of defts., for an  
to pay the duty for all  
d by them, accompanied  
of attaching the fish  
dealers of defts. If the  
demand were not complied with, the  
agent agreed, in writing, to pay the  
duty of 8d. per menas claimed from  
all the fishermen employed by all  
defts. dealers, & in pursuance of the  
drew a bill upon defts. for

could by them:  
more  
by  
the fishermen on account of  
Lk *JEFF v. NILLER*,  
& Co. (1818), 1 Nfld. L. R. 134  
NFLD.

drown against goods

L. &  
deflt. two bills of

by deflt. J. In bills for  
him with the After  
giving him credit for the  
there remained due by  
in respect of the bills, Rs. 1  
an action on the of ex-  
of the goods for the

the for  
by *AUSA*  
(1881), L. L. R.  
ABDUL on IND.

of a security

*Robinson* (1812), 4 Taunt. 408; *Middleham v. Bellerby* (1813), 1 M. & R. 310; *St. Martin-in-the-Fields Overseers v. Warren* (1818), 1 H. & Ald. 491; *Davies v. Arnott* (1825), 3 Bing. 154; *Kerion v. Brownlow* (1853), 4 H. L. Cas. 1.

**Note payable by instalments—Default clause—Amount recoverable.]**—See Nos. 156-160, ante.

**2157. Transfer for less than full amount of bill—Guarantee—Amount recoverable.]**—A bill of for £300 being sent to A. to get it dis-  
[, a banking co. advanced £100 on the bill, upon A. giving the co. his guarantee for the amount so advanced. A. had no other interest in the bill. In an action brought by A. on the bill:—*Held*: he was entitled to recover the whole amount, & not merely the amount for which he gave his guarantee.—*REID v. FURNIVAL* (1833), 1 Cr. & M. 538; 5 C. & P. 499; 2 L. J. Ex. 199; 149 E. R. 513.

—*Consd. Cook v. Lister* (1863), 13 C. B. N. S. *Held. Jones v. Broadhurst* (1850), 9 C. B. 173.

**Advance of less than full amount of bill—Larger balance due—Question of fact.]**—A debtor having given his creditor a bill, & obtained an advance at the same time of a sum smaller than the amount which had been paid, in an action to recover the full amount on the bill:—*Held*: the holder having continued creditor to a far

of a principal debt, the  
of the note has not a  
against the maker for any  
amount above what is due on the  
debt. *LEVILLER v.*  
11, 16 S. C.

received as holder in  
& without title of the  
the creditor him, &  
of any defect in  
who negotiated it,  
the rights of such  
it parties prior to  
the amount of  
prior parties. When  
is less than the  
the pledgee, as

for the do so. v. QUE  
BANK (1896), Q. R. Q. 123.—CAN  
a mtge. in  
of

able  
note, the holder of such note,  
it with knowledge of the mtge.,  
recover on such note more than is due  
on the mtge., if the mtgor. is allowed  
original

N. H.  
there a of

in three instalments & there had been  
a failure to pay the first  
granted provisional sentence  
the acceptor upon the original  
bill for the full amount thereof.  
1 (H.L.) *LTD. v. BANKRUPT & CO.* (1910), C. P. D. 162.—S. AP.

**2157 L. Transfer for less than full amount of bill.]**—Deflt. gave a promissory note for £100 to R. upon a  
R., in contraven

to plffe. in pa. for  
£14. Plffe. sued deflt. for  
the full amount:—  
should be for £14  
if any, judging the  
recover on the the  
of *THORPE & v.*  
19 V. L. R.

**Sect. 11.—Measure of damages: Sub-sects. 1**

amount, the question was, whether the bill had been deposited for a specific advance of the sum which had been paid, or had been given generally on account.—**KER v. BULLARD** (1862), 3 F. & F. N. P.

**English money—Bill drawn in Ireland.]**

A bill drawn in Ireland for £256 18s. sterling, payable in England, will be taken to mean English money.—**TAYLOR v. BOOTH** (1824), 1 C. & P. 286, N. P.

**2160. Foreign currency—Alteration of value.]—**

A. drew a bill of exchange upon R., in Oporto, for a thousand milreis upon Aug. 6, payable 30 days sight. On Aug. 14 the King of Portugal the value of the milreis 20 per cent., that it was impossible to have notice, & the bill presented for acceptance, with the advance of 20 per cent. R. was ready to accept & pay at the current value, but not with the advance, & the bill having been protested for non-acceptance, an action was brought against the drawer:—*Held*: there not being notice, the bill ought to be paid according to the ancient value, for the King of Portugal might not alter the property of a subject of England.—**DU COSTA v. COLE** (1888), Skin. 272; 90 E. R. 123.

No. 161.

**21591.** *Ex* Bill drawn in  
The amount of a bill of  
is to be in the  
of the to which it is  
for  
drawn in Dublin in London,  
to him & accepted by  
is payable in British currency.

1. 1st

**2159 II.**

r. BURTON

*A* Jurisdiction of  
to the master for bill may be  
AL BANK v.  
S. D. N. 374.—CAN.

**21601.** *Foreign*  
*of value.* On a &  
in New York, on  
1861,

having there become law until July  
was entitled to  
by the note at

of United  
trial.—J r.  
**GRiffin** 13 C. P. 330.—

**2160 II.**

in sterling mon  
of drawn

**BROWN v. ALLISON** (1867), 3 All. 464.  
—CAN.

**2160 III.**

an

in  
in  
—H.

6 U. C.

18

292.

**2160 v.** — — — — —  
were declared on as payable in  
currency, while the c  
that they were payable in  
"currency":—*Held*: as they were  
made payable in the United  
& the word "currency" in that  
held to mean currency of the  
the

20 N. S. R. (8 R. & C. L. T.  
**210.**—CAN.

a. "Currency"—Note  
United States.—Currency must mean  
"United States Currency," when the  
note is payable in the United  
—**WALLACE v.**  
16 S. C. R.

not  
in an action on a note, due &  
in the United States, to prove  
of dollars & cents there,  
currency.

no for  
C. P. 439.—CAN.

in action in  
Judgment.)—In an action on  
a note made & payable in the  
defl. after action  
an amount in  
equal at the then current  
rate of exchange to the amount of  
note in American currency, with  
—*Held*: Judgment must be  
for the amount of the note in  
with

15 L. C. R.

1 L. C. J. 349; 13 R. J. R.  
CAN.

d. — Bill drawn in New York  
accepted in Montreal.—A draft was  
drawn in New York for goods sold &  
delivered there, & accepted in Montreal,  
the price charged being in United  
States currency:—*Held*: the draft  
was payable according to such cur-  
rency.—**CONVITT v. McMASTER** (1863),  
7 L. C. J. 349.—CAN.

1. Undertaking by plaintiff to pay  
defendant's debts.—*Held*: the pro-  
missory note used upon was an uncon-  
ditional promise to pay, upon which

**2161. Foreign exchange—Time at which rate  
calculated.]—**In an action on a cheque "for  
7,680 francs (Paris)" the rate of exchange, at  
which the amount of the judgment is to be calcu-  
lated, is that ruling at the day of the trial.—  
**COHN v. BOULKEN** (1920), 36 T. L. R. 767; 64  
Sol. Jo. 636.

**2162. Partial absence of consideration.]—**If  
there is no consideration for part of the sum con-  
tained in a bill of exchange, the jury may apportion  
the damages, & need not find to the whole amount.  
—**BARBER v. BACKHOUSE** (1791), Peake, 61, N. P.

Annotation:—*Distd.* Tye v. Gwynne (1809), 2 Camp. 316.

**2163.** — — — — —  
The drawer of a bill of exchange,  
accepted by deft. for a sum consisting partly of a  
debt from which he had been discharged under  
Insolvent Debtors' Act, 1826 (c. 57), & partly  
of a new debt, is entitled to recover on the bill as  
to amount of the new debt, & a plea of discharge  
under s. 61 of that Act, as to the old debt, is no  
answer to the whole of a count on such a bill.—  
**SHEERMAN v. THOMPSON** (1840), 11 Ad. & El.  
1027; 113 E. R. 704.

Annotation:—*Reid.* Peakman v. Harrison (1872), L. R. 14 Eq.  
484.

— As defence to action.]  
sub-sect. 1, ante.

Part X., Sect.

deft. was  
charged an obligation undertaken  
him as to the payment of debts to a  
certain amount, was not liable upon

**NEASEY** (1912), 21 W. L. R.  
CAN.

1. Partial absence of considera-  
—P. was agent to manage wharf  
property of W., & receive the rents &  
profits thereof, being paid by com-  
mission. When his agency terminated  
W. was unable to obtain an account  
from him & brought an action therefor,  
which was compromised by P. paying  
\$375, giving \$125 cash & a note for  
the balance, & receiving an assign-  
of all debts due to W. in respect to  
wharf

list of which was prepared at the time.  
Shortly before the note became due P.  
discovered that, on one of the accounts  
to him, \$100 had been paid &  
credit on his note for that

W. refused, & in an action on  
the note P. claimed that the note was  
without consideration or, in the  
alternative, that the note should be  
rectified:—*Held*: as P.'s attorney  
had knowledge of the error before the  
compromise was effected & as, by the  
compromise, W. was prevented from  
— as fully into the accounts &  
establishing greater liability on the  
part of P., W. was entitled to recover  
the full amount of the note.—  
**v. WURRALL** (1902), 32 S. C. R.  
CAN.

**2162II.** — — — — —  
—**PHIL.**, an attorney practising in  
Chicago, Illinois, obtained for deft.,  
by proceedings in Chicago, a settlement  
of her claim for alimony, & deft. gave  
a promissory note for \$1,100,  
\$1,000 for his services & \$100  
for money lent. In an action on the  
note:—*Held*: the only question was

was  
paid.

the amount

with interest.—**WAYNE**  
(1914), 26 W. R.



**2164. Accommodation bill—Amount**

The indorsee of an accommodation bill, who takes it, knowing it to be such, & advances on it but part of the amount, can only recover as much as he has really paid.—**WIFFEN v. ROBERTS** (1795), 1 Esp. 261, N. P.

*Annotations*.—**Mentid. Rouquette v. Overmann** (1875), L. R. 10 Q. B. 525; **Kennedy v. Thomas** (1894), 42 W. R.

**S. P. NASH v. BROWN** (1817), Chitty on Bills of Exchange, 11th ed., p.

**2166.** — Balance over effects in hands of acceptor.—A trader having securities in his banker's hands to a certain amount, after a secret act of bkpcy., drew on them a bill for a larger amount on the score of his accommodation, payable to his own order, which, after acceptance, he indorsed to pltf., who knew of his partial insolvency, but not of the act of bkpcy. A commission of bkpcy. having been afterwards taken out:—*Held*: pltf., who was to make title through bkpt.'s indorsement after his bkpcy., though he were entitled to sue the acceptors upon the bill, yet could only recover on it the amount of the sum accepted for the accommodation of bkpt., over & above the amount of bkpt.'s effects in the hands of the acceptors at the time of the bkpcy., for which latter amount, & for which alone, they were liable to account in another form of action, not on the bill, to bkpt.'s assignee.—**WILLIS v. FREEMAN** (1810), 12 East, 656; 104 E. R. 257.

E. & H. 879.

**2167.** — Liability of drawer.—In an action against the acceptor of a bill, accepted for the of the drawer, the drawer is not a witness to prove that the holder to the bill on usurious consideration, does not stand indifferently liable to the & the acceptor, for the holder can recover him only the contents of the bill, but the is entitled to recover against him both the of the bill, & also all damages he may have including the costs of the action  
**JONES v. BROOKE** (1812), 4 Taunt E. R. 409.

*Reff.* (1879). *See* **Dawson v. Clark** (1879), 9 Bing. *See* **J. O. S.** 3 E. & H. 321. *See* **Larbaudier** (1879), 3 E. & H. 321.

**2168.** — Balance owing by drawer. The r of a bill, accepted for his it for value to his bankers & before the bill became due became bkpt.:—*Held*: the bankers, who knew that the bill was accepted for the accommodation of the drawer, could not recover from the acceptor more than the amount of their balance as between them & the drawer at the time

**2164.** Accommodation bill—Time of the on it  
Time of  
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s paid to them  
after the suit,  
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of his bkpcy.—**JONES v. HIBBERT** (1817), 2 Stark.

*Reff.* **Re Bunyard, Ex p. Newton**, (1880), 16 Ch. D. 330.

Bill accepted partly for value.  
An of a bill of exchange, on an action inst him by the payee, may show that he accepted it for value as to part & as an accommodation bill as to the rest.—**DARNELL v. WILLIAMS** (1817), 2 Stark. 106, N. P.  
v. Wright 11 C.

**2170.** — Amounts due from two indorsers.—In an action on a bill of exchange for £98 5s. 3d. by a second indorsee against the acceptor, the pleadings admitted that the acceptance & first indorsement were without consideration, & the was whether pltf. gave value for the indorse- to him. He relied in the first instance on mere production of the bill, but on objecting that he was bound to prove consid- he gave evidence of a debt to the amount of due to him from the first indorser, & of another debt to the amount of £20 18s., due to him from his immediate indorser, for goods sold:—*Held*: he was entitled to a verdict only for the latter amount.—*Qu.*: whether the indorsee of an accommodation bill is bound to prove in the first instance, or whether the of itself *prima facie* imports consideration, until debt. proves the contrary.—**SIMPSON v. CLARKE** (1835), 2 Cr. M. & R. 342; 1 Gale, 237; 5 Tyr. 4 L. J. Ex. 255; 150 E. R. 148.

*Reff.* **Exid. Isaac v. Farrar** (1836), Tyr. & Gr. Consd. Mills v. Barber (1836), 5 Dowl. 77.

**2171.** — Amount of debt for which bill deposited as security.—When a bill of exchange, accepted for the accommodation of the drawer, is deposited by him as security for a debt less than the amount of the bill, the holder is entitled to prove in the bkpcy. of the acceptor for the full amount of the bill, though he cannot receive dividends in excess of the debt due to him by the drawer.—*Re* **BUNYARD, Ex p. NEWTON, Ex p. GRIFFIN** (1880), 16 Ch. D. 330; 50 L. J. Ch. 484; 44 L. T. 232; 29 W. R. 407, C. A.

—See, generally, Part X., Sect. 3, ante.

Recovery by summary judgment.—Indorsement of writ. Part XXII., Sect. 6,

1882 Act, s. 57 (1)

**2172.** In demand. Under a particular of pltf.'s that the action was brought to

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of out- for  
made by CAN. O. H.

XIII. SECT. 11, SUB-SECT.

(1854), 11

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*Sect. 11.—Measure of damages: Sub-sect. 2, A*

recover the amount of a note of hand, interest on it is recoverable.

Though the interest is not claimed *eo nomine* by the particular, *plff.* may recover it, as arising not out of the principal so demanded by the particular (LORD ELLENBOROUGH, C.J.).—BLAKE v. LAWRENCE (1802), 4 Esp. 147, N. P.

2173. —.—.]—*Semble*: interest is recoverable upon a contract for the payment of money on a certain day, as on bills of exchange, promissory notes, etc.—DE HAVILLAND v. BOWERBANK (1807), 1 Camp. 50, N. P.

*Annotations*:—*Consd.* Gordon v. Swan (1819), 2 Camp. 429, n. *Distd.* Bell v. Free (1818), 1 Swan. 90. *Consd.* Hare v. Rickards (1831), 7 Bing. 234. *Appld.* *Re* Maria Anna & Steinbank Coal & Coke Co., McKewen's Case (1877), 8 Ch. D. 447. *Consd.* L. C. & D. Ry. Co. v. S. E. Ry. Co., [1893] A. C. 429. *Reid.* De Bernales v. Fuller (1816), 2 Camp. 426; Higgins v. Sargent (1823), 2 B. & C. 348; Fruhling v. Schroder (1835), 2 Scott. 135.

2174. Interest not expressed on note. — The rule established by *bkpey. comrs.*, that note

creditors cannot prove interest upon them, unless expressed in the body thereof, is a reasonable one, & the *ct.* will not break through it.—*Ex p. MARLAN* (1746), 1 Atk. 150; 20 E. R. 97.

*Annotations*:—*Consd.* Cameron v. Smith (1819), 2 B. & Ald. 305. *Reid.* *Re* Burgess, *Ex p.* Greenway (1819), Buck. 412.

2175. —.— Note payable on demand.]—Interest out of the surplus of a *bkpt.* bankers' estate, refused upon his promissory notes payable on demand, as not being debts carrying interest, either by contract, or on the face of them.—*Re* WILCOX, *Ex p.* COCKS (1813), 1 Rose, 317, L. C.

2176. —.— Note payable at uncertain time.]—A security for money lent was in the following form: "In one month after my arrival in England, I promise to pay P. or order, £135 sterling, for value received. N."—*Held*: as the instrument did not express upon the face of it that it was to carry interest, & there was no evidence that any agreement had been entered into for payment of interest, interest was not recoverable.

Interest is not payable upon money secured by a

4 Nfld. L. R. 406. NPLD.

2172 II. —.—.]—Circumstances in which *Held*: the understanding appeared to be that no interest should be charged.—*SEYMOUR v. FAITEUX* (1865), 1 L. C. L. J. 37. CAN.

2172 III. —.—.]—In an action on a promissory note signed by *defts.* in favour of *plffs.*, judgment was for *plffs.*, *defts.* not to be with interest on the note at 7 per cent., by *plffs.* without *deft's* knowledge.—*BANK OF OTTAWA v. D. O. W. N.* 313.

CAN.

2172 IV. —.—.]—*Held*: *plffs.* had a right to interest as part of a bill of exchange.—*COWAN & CO. v. 21 C. L. T.* 374. CAN.

2172 V. —.—.]—Under 1906 Act,

is to receive after maturity.

EN CLINTON

33 W. L. R. W. W. R. 1269. CAN.

2172 VI. S. P. Co. v. GRIMMON (1916), 33 W. L. R. 845; 9 W. W. R.

2172 VII.

Blagrow. *Defts.*, merchants in ordered through *plffs.* agents in Bombay fifty cases of goods to be on *c.l.f.*

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It was in on her

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1914, by the Price (C.

the liability to owed to

as *defts.* obtained all that they were entitled to obtain under the *c.l.f.* contract when the bill was sent to them for acceptance, i.e., shipping documents, the risk after the acceptance was entirely their own, & having refused payment on maturity they were liable to pay overdue interest after that date & the notarial charges incurred by *plffs.*—*MARSHALL & CO. v. NAGINCHAND FRUCHAND* (1916), 1 L. R. 42 Bom. 473. IND.

2172 VIII. —.—.]—In an action on promissory notes the jury were not asked any question as to interest on the amount of the notes, & the trial judge, in giving judgment, disallowed interest.—*Held*: his decision could not be interfered with.—*BROWN v. AL. BANK OF*

N. Z. L. R. 487. N.Z.

2172 IX. —.—.]—At an auction of it was agreed that

placed in the hands of *plff.*, *sofr.* to the vendors, to be deposited by him with *deft.* in a trust account, for the purpose of receiving the proceeds, & paying off the *mitgo.* debts on the property sold & holding the surplus. A trust

with of exchange deposited by *plff.* for *Deft.* having refused to *plff's* right to the bill or *plff.* brought an action the amount with interest:—

*Held*: *plff.* was not entitled to recover interest on the amount of the bill, the amount being simply a debt due from *deft.* to *plff.*—*REID v. BANK OF J. R. N. S.* 40.—

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be imputation of

the interest upon a judgment on a bill of exchange.—(*ORMAN v. ARTHUR* (1888), L. & G. temp. Plunk. 235.—IR.

1. —.—.]—The *ct.* will not allow interest on a judgment obtained upon bills of exchange, when *plff.* his remedy by petition for a under 5 & 6 Will. 4, c. 55. *r. BATEMAN* (1840), 2 L. Eq. R. 361.—IR.

m. —.—.]—Sequestration creditors are not entitled to levy under their sequestration interest on the sums marked on their respective writs of *levari*, although the judgments had been obtained on bills of exchange.—*STERLING v. WYNNE* (1834), 1 Jo. Ex. Ir. 51.—IR.

2174 I.

—A. was indebted to a bank on promissory notes, of which he was the indorser or maker. The liquidators of the bank received instalments on the notes, but claimed that they were entitled to interest:—*Held*: they were not so entitled.—(*GILLARD v. PITTS* (1901), 8 Nfld. L. R. 471.

2174 II. —.—.]—In a suit under Act XIV. of 1882 (c. 39), *plff.* is not entitled to recover any interest, unless such interest is specified in the promissory note itself, or to give evidence regarding any agreement to pay interest.—*HHUPATI RAM v. SOUR-KNDIA MOHUN TAGOR* (1903), 1 L. R. 30 Calc. 448; 7 C. W. N. 412.—IND.

An action was to recover the amount of a bill other with interest from the date of it. There was nothing the face of the bill to show that it was to be paid with interest. Judgment was given for the amount without

*Plff.* claimed interest on payable on demand, but silent about interest:—*Held*: the *ct.* could award interest.—*BHATT v. HAJI MUHAMMAD SAIT* (1899), 1 L. R. 18.—IND.

2175 II. —.— an action for the balance due

D. being

in

1 R. L. R.

be



written instrument, unless it appears upon the face of the instrument that it was intended that interest should be paid, or unless such an intention may be implied from the usage of trade, as in the case of mercantile instruments.—PAGE v.

(1820), 9 B. & C. 378; 4 Man. & Ry. K. 305; 7 L. J. O. S. K. B. 267; 109 E. R. 140.

*Annotations*:—*Consol. L. C. & D. Ry. Co. v. S. E.* (1893) A. C. 429. *Reid, Foster v. Weston* (1709; *Price v. G. W. Ry. Co.* (1847), 16 M. W. *Mentid, Hare v. Rickards* (1831), 5 Moo. & P. 3. *Comptoir D'Escompte de Paris* (1871), L. R. P. C.

**2177. — Discretion of jury.** Interest upon the amount of a note, when there is no contract on the face of it, is in the discretion of the jury.—*BREWERTON v. PARKER* (1867), 17 L. T. 325.

**2178. At discretion of jury—Power of court to add.**—Where a promissory note was made abroad, & the payee did not sue upon it until thirty years afterwards, & the jury refused to give interest:—*Held*: after verdict, the ct. could not increase the amount of the verdict by adding the

*DE BELLOIX v. WATERPARK (LORD)* (1822), 1 Ry. K. B. 16.

*Consol. L. C. & D. Ry. Co. v. S. E.* (1893) A. C. 429. *Petre v. Duncombe* (1851), 2 L. M. & P. 107; *Stevenson v. Akl. Fur. Carton Industrie*, A. C. 239. *Reid, Hooke v. C.* 621; *Rodway v. Lucas* (1855), 1 Ex.

**2179. Executor holding note—Payable to himself on demand.**—Where a debtor leaves a creditor by note on demand, his exor., a ct. of equity will not allow him interest for it, because he may turn money to his own advantage, which is coming in by testator's assets.—*ADAMS v. GALE* (1740), 2 Atk. 106; 26 E. R. 406.

**2180. Bill payable at particular place—Necessity for presentment there.**—If a bill of exchange be accepted, payable at a particular place, in an action against the acceptor, pltf. must prove that it was presented there for payment, in order to entitle himself to interest.—*PHILLIPS v.* (1820), Gow.

**2181. Accommodation bill—Paid by acceptor.** *Assumpsit* in consideration that pltf., for accommodation, & at the request of deft., would accept certain bills of exchange, & would deliver them, so accepted, to deft., in order that he might negotiate same for his own benefit. Deft. undertook to provide money for payment of the bills, as they became due, & to indemnify pltf. from any loss or damage by reason of the

deflt. did not provide money for the bills, nor indemnify pltf. from damage, by reason whereof pltf., as acceptor, was forced & obliged to pay to the holders of the bills certain sums of money, with interest, charges, & expenses:—*Held*: as pltf. might be entitled upon such declaration to recover special damage, a set-off was not a good plea.—*HARDCASTLE v. NETHERWOOD* (1821), 5 B. & Ald. 93; 109 E. R. 1127.

*Consol. Crompton v. Walker* (1860), 3 E. Brown v. Tibbits (1862), 11 C. R. N. S. 855. *r. Atwood* (1853), 17 Jur. 789; *Johnson v.* 11 Exch. 73.

**2182. Second bill taken for principal—Interest on unpaid first bill.**—Pltf. held a bill of exchange, accepted by deft. When it became due, in Mar., deft. asked for time, & in June gave pltf. another bill for the same sum, pltf. telling him at the same time that something was due for interest, & continuing to hold the first bill. The second bill was paid after it became due:—*Held*: pltf. was still to sue deft. on the first bill, for the interest on it.—*LUMLEY v. MUGGRAVE* (1837), 4 N. C. 9; 3 Hodg. 247; 5 Scott, 230; 7 L. J. C. P. 49; 1 Jur. 799; 132 E. R.

**2183.**—Pltf. held a bill of exchange, drawn by deft. When it became due, in Mar., deft. asked for time, & in June the acceptor gave pltf. another bill for the same sum, pltf. telling him at the same time that something was due for & continuing to hold the first bill.

bill was paid after it became due:—pltf. was still entitled to sue the drawer of the bill, as well as the acceptor, for the interest due upon it.—*LUMLEY v. HUDSON* (1837), 4 Blug. N. C. 15; 5 Scott, 238; 7 L. J. C. P. 52; 2 Jur. 48; 132 E. R. 694.

**2184. As part of debt.**—Debt upon a promissory note, stating a promise to pay £40 on demand, with lawful interest. Plea, as to the debt, that deft. paid, & pltf. received £150 in full satisfaction of the debt & of all damages:—*Held*: was part of the debt, & was not & pltf. was entitled to recover the upon the issue.—*HUDSON v. FAWCETT* (1844), 7 Man. & G. 348; 2 Dow. & L. 81; 8 Scott, N. R. 32; 13 L. J. C. P. 141; 135 E. R. 145.

**2185. Collateral agreement for interest—Bill indorsed over to third person.**—Defts. entered into the following agreement with pltf.: "In consideration of your discounting for us the under-mentioned bill, we do hereby undertake, if same

interest on of the note to

37 U. C. R. 514.—CAN.

2178 II.

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(2).—*SPALDING*, 12 C. L. R. 163.

2177 I.

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, *Arm. M. & O.*

2178 III. —The jury are to give interest on a

way of damages, or not.—*STURDY* v. (1893), 1 B. C. R.

**2178 I. At discretion of jury.**—ed for payment of a at a rate specified, a claim for interest after that day is a claim for damages for breach of the

—*STEWART v. WATSON* (1860), 11 Ir. Jur. 123.—IR.

2178 IV. —In an action by payee against indorser of a bill of exchange

the declaration claimed the amount of the bill, with interest at 8 per from the date of maturity to the of judgment. The jury did not amount recoverable either for or interest. Pltf. entered up for the amount of the bill, with interest as claimed:—*Held*: (1) interest on a bill of exchange being in of damages, the amount of

a jury.

default: (2) the varied by striking out of

2184 I. As part of debt, made payable by a note is part of the e detaining 3 U. C. R.

# 330 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

11.—  
(a) &

is not wholly paid at maturity, to pay, as interest thereon, £17 10s. for each month any portion of which shall have elapsed after maturity of the bill & until the entire amount of same is wholly paid & satisfied; all payments made by us to be applied first in liquidation of interest, & afterwards in reduction of the principal sum of £350." In an action upon the above contract, for non-payment of the stipulated interest:—*Held*: a plea showing that plff. had indorsed over the bill to a third person, was a good answer, inasmuch as the interest could only be claimed as accessory to the bill. —*FLORENCE v. DRAYSON* (1857), 1 B. N. S. 584; 28 L. T. O. S. 271; 140 E. R.

*Appld.*

*c.*

B. N. S.

2186. — *Effect of judgment on bill.*—In consideration of plff.'s discounting a bill, deft., jointly & severally with D., undertook, if same was not paid at maturity to pay, as interest thereon, £20 for each month afterwards. The bill was not paid at maturity, & plff. issued a writ against deft., & by the indorsement thereon claimed the amount of the bill & interest at £20 per month as per the agreement, but the declaration in the action was on the bill only, & contained no count upon the agreement or for interest, & plff. recovered judgment by default for the amount of the bill only. Plff. having brought a second action against deft. upon the agreement for interest:—*Held*: the action was maintainable for interest due before the judgment was recovered, but not for interest due subsequently to it.—*FLORENCE v. JENINGS* (1857), 2 C. B. N. S. 454; 26 L. J. C. P. 274; 30 L. T. O. S. 53; 3 Jur. N. S. 772; 140 E. R. 494.

*Consd. Re Sneyd, Ex p. Fewings* (1883), 25 D. 1.  
*Mentd. Re King & Hoesley, Ex p. King & 1895* 1 Q. B. 189; *Faber v. Lathom* (1897), 77 T.

2187. *How right lost*—*Recovery of interest at lower rate than agreed.*—Deft. borrowed money of plff., & he gave his promissory note for the amount with interest at 60 per cent., together with an equitable charge on copyholds as a collateral security for the note. Plff. sued at law on the note, & by mistake, he claimed & recovered interest at 3 per cent. instead of 60 per cent., which was paid:—*Held*: plff. could not afterwards sue upon the mtge. to recover the deficiency, & his bill for that purpose should be dismissed with

*Interest on interest of Government promissory notes withheld.*—Interest may be claimed on the interest of Govt. promissory notes withheld by another.—*TAMICKNATH MOOKERJEE v. GOVERNMENT OF MONROE* (1885), 3 W. R. 147.—IND.

2188 i. *How right lost*—*Note not protected.*—A promissory note was dishonoured at maturity, but was not protected by the holders because of a waiver by the indorsers of presentment & notice:—*Held*: the indorsers were not liable to pay interest thereon as a debt.—*Re McDONNELL* (1883), 13 A. R. 263.—CAN.

2188 ii. ———.—*The acceptor of*

bill of exchange is from the time of non- the bill be not protected.—*BURKE v. MOLLOY* (1794), Ridg. L. & S. 145, 150.—IR.

2188 iii. ———.—*Lockes.*—*Held*, by Lockes, in not presenting for, or suing on, a promissory note for a of over three years, had to interest.—*Lockes v. 3 R. C. R.*

2188 iv.

*of*

2188. ———.—*Note payable on demand—No demand made.*—Interest was not allowed on the notes of a banking co., where the notes were payable on demand, & no demand for payment had been made before the co. was ordered to be wound up.—*Re HEREFORDSHIRE BANKING Co.* (1867), L. R. 4 Eq. 250; 36 L. J. Ch. 806; 17 L. T. 58; 15 W. R. 1056.

*Co., Claim* (1872), L. R. 13 Eq. 623; *Whittingstall v. Grover* (1886), 55 L. T. 213. *Mentd. Re East of England Banking Co.* (1868), L. R. 6 Eq. 368.

2189. *Bill dishonoured abroad.*—Under South Australian 1884 Act, s. 57, which, except as regards the rate of interest, is identical with English 1882 Act, s. 57, the holder of a bill of exchange which has been dishonoured abroad, i.e., out of the colony, cannot sue for interest under s. 57 (1).—*Re COMMERCIAL BANK OF SOUTH AUSTRALIA* (1887), 36 Ch. D. 522; 57 L. J. Ch. 131; 57 L. T. 395; 36 W. R. 550; 3 T. L. R. 820.

— *Recovery of amount of re-exchange with interest thereon.*—*See Sub-sect. 4, post.*

2190. *Surplus estate of insolvent—Interest from due date to when bill paid—Power of Insolvent Debtors Court to allow interest.*—On Jan. 28, 1845, C. filed a petition in the Insolvent Debtors Ct. for his discharge, & on Jan. 29 an order was made vesting in the provisional assignee all insolvent's then present estate, & all future estate which might come to him before he should be entitled to his final discharge. On Feb. 28, an order was made discharging insolvent from custody upon his executing a warrant of attorney to confess judgment for the amount of the debts stated in his schedule. At the date of his petition insolvent was entitled to a contingent reversionary interest in the estate of D., which did not fall into possession until many years afterwards. Insolvent died in 1880. The official assignee afterwards brought an action to recover insolvent's interest in D.'s estate, & recovered £26,000. Claims were then made by various creditors of insolvent, & among others, by the trustees of the will of F., deceased, for £500 the amount of a bill of exchange which insolvent had accepted as security for a debt of that amount due by him to F. The bill became due on Dec. 4, 1844, & was dishonoured. The debt was mentioned in insolvent's schedule. The official assignee admitted the debt. The trustees to the ct. for an order declaring that, out of the money in the hands of the official assignee, after payment of costs, & of 20s. in the pound on the amount of the debts proved & admitted in the insolvency, they were entitled to be paid interest at 5 per cent. per annum on the £500 from the date of the maturity of the bill:—*Held*: appcts. were

to suppose that plff. did not intend to claim payment against him.—*SPARTAN v. ANDERSON* (1899), 18 N. Z. L. R. 149.—N.Z.

*a. — Renewal of promissory note granted in respect of an advance made being about to prescribe, another note was granted for a on the latter*

*[from the date of]*

—*Horn Johnson* (1895), 22 Q. L. 442.—SCOT.

18.



not entitled to any interest.—*Re CLAGETT, Ex p. CHARMAN* (1887), 4 T. L. R. 18, C. A.

By summary judgment.]—See Part XXII., Sect. 6, *post*.

### B. From what Time.

#### (a) When expressly payable.

See 1882 Act, ss. 9 (3), 57 (1)

**2191. Bill payable at certain date**—From date of bill.]—Where a bill is drawn for £100, payable 4 months after date, bearing interest, the interest is to be calculated from the date of the *KENNERLEY v. NASH* (1816), 1 Stark. 452.

*Annotation*.—*Mentd. Jones v. Jones* (1833), 3 Tyr.

**2192.** ———. ———.]—If a bill, payable at a given time after date, be for a specified sum, "with lawful interest for same," interest shall be computed from the date.—*DOMAN v. DIBDEN* (1826), Ry. & M. 381.

**2193.** ——— & from due date.]—In an action against the drawer of a bill for £200, with 10 per cent. interest:—*Held*: the holder might recover interest at 10 per cent. from the time when the bill became due, as well as for the time during which it was running.—*KEENE v. KEENE* (1857), 3 C. B. N. S. 144; 27 L. J. C. P. 88; 30 L. T. O. S. 122; 140 E. R.

**2194. Note payable on demand**—From date of note.—By the terms of a promissory note debt. undertook to pay legal interest on demand:— that meant from the date of the note.— *v. RICHMOND* (1816), 1 Stark. 507.

2195.

Bills of

*v.*  
11th ed.,

**2196. Note payable at uncertain time**—From date of note.]—A promissory note in the following form: "I promise for myself & exors. to pay H. or her exors., one year after my death, £300 with legal interest," bears interest from the date of the note.—*ROFFEY v. GREENWELL* (1839), 10 Ad. & El. 222; 2 Per. & Dav. 365; 8 L. J. Q. B. 336; 113 E. R. 86.

*Annotation*.—*Dntd. Mathews v. Kebble* (1868), 3 Ch. App. 691.

**2197. Note made payable to wife during coverture**  
Action by payee as widow—From date of note.]

—A married woman being administratrix received a sum of money in that character, & lent same to her husband, & took in return for it the joint & several promissory note of her husband & two other persons, payable to her with interest:—*Held*: although she could not have maintained any action upon the note during the lifetime of her husband, yet she might maintain an action upon it against either of the other makers at any time within six years after the death of her husband, & recover from the date of the note.—*RICHARDS v.*

12 B. & Ad. 447; 9 L. J. O. S. K. B. 109 E. R.

*v.* B. M. & W. & W. E. 442;  
R. 4 Q. B.

Act, s. 37 (3).

**2198. In general.**—upon bills of exchange, in an action at law, in the of damages, not strictly as interest, & for of the contract, not in pursuance of

399, L. C.

**2199.** ———.]—Interest upon a promissory note re for the detention of

*Dow. & Ry. K. B.*

*Annotation*.—*Consol. Railway v.* 24 L. J. K. B. 155. *Redd. Lally v. Stone* (1828), 2 581; *Brooke v. Coleman* (1833), 1 Cr. *Duncan v. Stint* (1822), 5 B. & Ald. *Wainwright v. Bland* (1835), 1 Gale, 333; *Petre v. L. M. & P.* 107; *Stevenson v. Akt. Fur Carton Industrie*, [1918] A. C. 239.

**2200. Against acceptor or maker**—From demand.]—A bill of exchange bears interest from the time it is demanded.—*ANON.* (1704), 6 Mod. Rep. 188; E. R.

B. & Ald. 204.

**2201.** ——— From time money lent.]—On a motion to set aside a writ of inquiry, on the ground that the jury had found interest on the note mentioned in *pttl.*'s declaration:—*Held*: *pttl.* was entitled to the full interest from the time of

, Pr. 42; 125 E. R. 940.

## PART XIII.

### 11, SUB-SECT. 2.

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in a year, with

at certain date—  
a purchase of  
his note payable  
for part of the  
died

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need for  
manned a year afterwards  
the cause  
of action did not arise until there  
was, interest was  
whole period from  
of the note.—*STEVENS v.*  
(1866), 15 Gr. 576.—CAN.

drawn "12 months after date I  
to pay £200 with 6 months'  
":—*Held*: no more than 6  
interest before service of pro-  
id be allowed, but *pttl.*  
to interest from service

note was in  
Four years  
promise to  
for value

with  
of 64  
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their date, are not usurious on  
l. where the debt, for which

year  
that none was payable until four  
after the date of the note, judgment  
was given in favour of debt.—*BURTON  
v. QUILMAN* (1842), Hutt, 236.—  
L. of M.

**2194. Note payable on demand**—  
From date of note.]—A promise to pay  
on demand £200, with interest, is a  
promise to pay interest from the date  
of the note.—*BAXTER v. ROBINSON*  
(1816), 3 H. de L. 439.—CAN.

**L. Note dated August 21, 1857**—  
Interest from "August 1 last."—A  
promissory note dated Aug. 21, 1857,  
payable with interest "from Aug. 1  
last," bears interest from Aug. 1, 1854.  
—*CALMOUN v. COLLETT* (1862), 5 All.  
262.—CAN.

w. Note bearing interest from

## PART XIII. SECT. 11, SUB-SECT. 2.

—B. (b).

**2201. Against acceptor or maker**—  
From time money lent.]—A mtge. had  
to a trustee  
one of w  
was found in

by the trustee & the party  
in the note:—*Held*: to the of  
the amount remaining du-  
mize., including six years' interest, the  
party beneficially interested was en-  
titled to recover the amount of the  
note & interest for the whole period  
note had run.—*HOATON v.*  
(1875), 22 Gr. 8.—CAN.

2191 III.

Sect. 11.

2, B. (b),

**2202. From due** given  
on a note of hand from the time of its beco  
payable.—**LITHGOW v. LYON** (1805), Coop. G  
E. R. 465.

r. Greenwell

r. &amp;

**2203. — Payable on day certain.]**—A  
written undertaking to pay at a day certain, as a  
promissory note, carries interest from the day.  
As at law it is given by way of damages.—**UPTON**  
**v. FERRERS (LORD)** (1801), 5 Ves. 801; 31 E. R.

—**Reid.** Lowndes v. Collens (1810), 1 27;  
Webster v. British Empire Mutual Life Assce. 15  
Ch. D. 169. **Mentd.** Ralph v. Carrick (1879), 11  
873; *Re Willatts*, Willatts v. Artley, [1905] 1 Ch.

**2204. — Bill accepted after death of**  
**payee — Demand by administrator.**—Where bills  
were accepted after the death of the payee:—  
**Held:** the administrator was only entitled to  
recover interest from the time of demand of pay-  
ment made by him, & not from the time the bills  
became due.—**MURRAY v. EAST INDIA CO.** (1821),  
5 B. & Ald. 204; 106 E. R. 1167.

**Annotations:** — **Reid.** Davidson v. Stanley (1841), 2 Man. & G.  
721. **Mentd.** Tolson v. Kaye (1822), 3 Brod. & Bing. 217;  
Blades v. Free (1829), 7 L. J. O. S. K. B. 211; R. v.  
Okford Fitzpayne (1830), 9 L. J. O. S. M. C. 12; Cowper  
v. Goddard (1833), 9 Bing. 748; Ward v. Shew (1833),  
9 Bing. 698; Esdaile v. La Nauze (1835), 1 Y. & C. Ex.  
391; Perry v. Jenkins (1836), 1 My. & Cr. 118; Goldstone  
v. Tovey (1839), 6 Bing. N. C. 98; Rhodes v. Smethurst  
(1840), 6 M. & W. 351; Webster v. Kirk (1852), 17 Q. B.  
941; Fuller v. Mackay (1853), 2 E. & B. 373; Thomson  
v. Harding (1853), 2 E. & B. 639; Curlewis v. Morlington  
(1858), 27 L. J. Q. B. 439; Sturgis v. Darell (1859), 4  
H. & N. 622; Bateman v. Mid-Wales Ry. Co. (1866),  
Har. & Ruth. 508; Crouch v. Credit Foncier of England  
(1873), L. R. 8 Q. B. 374; Musurus Bey v. Gadban,  
(1894) 2 Q. B. 352; Smith v. Islington Grdns. (1902),  
86 J. P. 661; Meyappa Chetty v. Supramanian Chetty,  
[1916] 1 A. C. 603.

**Excuse for non-payment.]**

A bill or note, payable on a day certain, carries  
interest from that day, unless the non-payment  
has been occasioned by the negligence of the  
holder. — **LAING v. STONE** (1828), 2 Man. & Ry. K. B.

r. Jennings

2 C. B. N.

**2206. — Bill not produced.]**—A  
by indorsee against acceptor stated, that C.,

From due

In

Interest

T.

date of A's not from  
to B., as the interest from the former  
equally with the principal,  
A's security.—**MILANES**  
(1839), 14 Pac. Col. 391.

SCOT.

v.  
CAN.

32 L. C. J.

1. —  
In defaultInterest runs on bills &  
date.—

C. J. 88.—CAN.

BANK OF OTTAWA v.  
26 S. C. 27.—CAN

bill of  
to go by  
the bill to

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**DUFFY** (1844), 6 I. L. R.

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that they

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HARD

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on demand, & in-  
**Held:** plth. were entitled to  
for the amount of note, with  
cent. per annum from  
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## ABILITY OF PARTIES

sent in to the liquidators, the stoppage of the bank not operating to dispense with the necessity of making a demand.—*Re EAST OF BANKING CO.*

38 L. J. Ch. 121; 19 L. T. L. C. & L. JJ.

*Annotations:—Henth. Re Hughes' Claim* (1872), L. R. 13 11th Australia, [1885] 1 Ch. L. T.

*Re Bank Lee*

11 L. J. Ex. 308; Allen v. P. C. C. 314; Brook v. Brook

**2211. — Payable by instalments—Default clause—From first default.**—When a note is payable by instalments, & on failure of payment of any instalment, the whole is to become due, the interest is to be calculated on the whole sum remaining unpaid, on default of any instalment, & not on the respective instalments at the respective times when they would become payable.—*BLAKE v. LAWRENCE* (1802), 4 Esp. 147, N. P.

**2212. Against drawer or indorser—From date of dishonour.**—Where there is no allowance for damages, pltf. is entitled to interest from the day the bill was dishonoured for non-acceptance.—*HARRISON v. DICKSON* (1811), 3 Camp. 52, n., N. P.

**2213. — From notice of dishonour.**—The drawer of a bill, which is dishonoured by the acceptor, is not liable to pay interest for the time which elapses between the day whereon the bill becomes due, & the day when the drawer receives notice of the dishonour. *WALKER v. BARNES*, 5 Taunt. 240; 1 Marsh. 36; 128 E. R. 681.

*Consid. Signers v. Lewis* (1834), 1 C. M. & R. Refd. *Murray v. East India Co.* (1821), 5 B. & Ald.

**2214. Foreign bill—Against drawer—From date when bill due.**—Where an action was brought upon a foreign bill of exchange, made payable in England, & the question was what interest should be accorded to pltf.:—*Held*: the measure of damages was the damage sustained by pltf. by the non-performance of the contract, viz., the whole interest due upon the sum lent, viz., from the time of its being payable up to the time of signing the judgment or other the time of liquidating the debt.

Where money is made payable by an agreement between parties & a time given for the payment of it, this is a contract to pay the money at the given time, & to pay interest for it from the given day, in case of failure of payment at that day (*per CUR.*).—*ROBINSON v. BLAND* (1780), 2 Burr. 1077; 1 Wm. Bl. 256; 97 E. R. 717.

*v. Bragg* (1812), 15 East, 323.

from which interest must be to run.—*BENT v. HAJI MUHAMMAD*, 11 L. R. 23 Mad. 18.—IND.

**2210 H. M. P. HANKE v. JORDAN & FUCHS** (1909), 19 C. T. R. 520.—S. AF.

**22121. Against drawer or indorser—From date of service—On judgment against maker & first indorser.**—The holder of a note, who has obtained judgment thereon against the maker & first indorser, is entitled, in an action subsequently instituted against the other indorsers, to interest from date of service on the amount of the first judgment.—*TRINAUDRAU v. PATEL* (1892), Q. R. 28 C. 479.—CAN.

**c. Cheque—Against drawer—From date of presentment for payment.**—Interest on a dishonoured cheque runs from the date of presentment for & not from the date of the

C. P. D. 73; J. D. R. 88.—S.

### PART XIII. SECT. 11, SUB-SECT.

**d. To date of** is recoverable on a note at the rate specified in it till payment.—*HOWLAND v. JENNI*

**f. —**—Where a promissory note is made payable with interest at 7 per cent. until paid, the holder is entitled to recover interest at that rate to date of payment.—*MEACHAM v. BANK OF CANADA v. McLEOD & LEMMON* (1910), 15 B. C. R. 296.—CAN.

**g. — Construction of covenant for payment.**—A note dated Jan. 11, 1862, payable to & indorsed by S., was for \$5,000, with interest at the rate of 2 per cent. per month until paid. By a covenant for payment contained in a mize. deed of the same date, gives

18; *Jacobs v. Credit*

*Re Missouri S.M. Co.* (1889), 42 Ch. D. 321; *Compagnie de Mozambique v. British South Africa Co.*, *De Souza v. British South Africa Co.*, [1892] 2 Q. B. 338; *South African Territories v. Wallington*, [1898] A. C. 309; *Kaufman v. Gerson*, [1903] 2 K. B. 114; *Moulin v. I. K. B.* 746; *Saxby v. Fulton*, [1909] 2 K. B.

against the drawer of a foreign bill of exchange dishonoured in England for non-acceptance, where pltf. is allowed a percentage in name of damages, he is only entitled to interest from the day when the bill ought to have been paid.—*GANTT v. MACKENZIE*

**2216. Effect of tender.**—The maker of a promissory note paid money into the hands of an agent to retire it. The agent tendered the money to the holder of the note, on condition of having it delivered up, but the note being mislaid, the condition was not complied with. The afterwards became bkpt. with the money in hands:—*Held*: the maker was still on the note, but interest was not the time of the tender.—*Camp*, 206, N. P.

### C. To

**2217. To day of acceptance—Principal payable at ten days' sight.**—A customer deposited a sum of money with a banker, & received a note, by which the banker promised to pay the principal at 10 days' sight, with 3 per cent. interest to the day of acceptance. The banker paid interest on the note, but at the same time told the customer that he would not, in future, pay more than 2 per cent., & in his presence altered the terms of the note by striking out three & inserting two and a half:—*Held*: the word "sight."—*MUTTON v. TOOMER*, 7 B. & C. 416; 1 Man. & Ry. K. B. 125; 6 O. S. K. B. 49; 108 E. R. 778.

*Monte. Serle v. Norton*, 9 M. & W. Ashling v. Boon, [1891] 1 Ch.

to pltf. as a security  
of 1  
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*Held*: July 11, 1862, but not after such if the then remain unpaid.—*Gr.* 249; 4 A. R. 218; 10 B. C. R. 278.

**h. — Note for security of** *chase-money lodged in court—Order omitting "with interest."*—Where a promissory note, payable on demand, is lodged upon the consent of all parties as security for quarter of the purchase-money on a sale under the ct., & the order for lodging same erroneously omits "with interest," the purchaser will be compelled to pay interest to the time of payment.—*WOOD v. WOOD* (1830), 3 L. R. 1st Ser. 225.—EN.

## 11.—Measure of damages: Sub-sect. 2, D.;

## D. At what

2218. Five per cent.]—In the course of an administration of assets a question arose as to the rate of interest upon a promissory note, payable on demand. The master had allowed only 4 per cent.:—*Held*: it ought to be 5 per cent.—*UPTON v. FERRERS (LORD) (1801)*, 5 Ves. 801; 31 E. R.

*Annotations*:—*Reid*. Lowndes v. Collins (1810), 17 Ves. 27; Webster v. British Empire Mutual Life Assce. (1880), 15 Ch. D. 169. *Mentd.* Ralph v. Carrick (1879), 11 Ch. D. 873; *Re* Willatts, Willatts v. Artley, [1905] 1 Ch. 878.

2219. — As damages.]—If a party makes a promissory note, whereby he promises to pay plff., or order, "£600, with interest thereon, at the rate of 6 per cent. per annum, 12 months after date," the judge will advise the jury, in allowing interest from the date the note became due up to the time of signing judgment, to allow it at the rate of 5 per cent. only.—*WARD v. (1842)*, Car. & M. 368.

2220. Liability of acceptor—Rate where payable—Foreign bill.]—The acceptor of a foreign

bill of exchange is not liable for more than the principal sum, together with interest according to the legal rate of interest when the bill is payable.—*WOOLSEY v. CRAWFORD (1810)*, 2 Camp. 445, N. P.

*Annotations*:—*Mentd.* Walker v. Hamilton (1860), 1 De G. F. & J. 603; *Re* General South American Co. (1877), 7 Ch. D.

2221. — Bill drawn in Paris—Payable in England.]—A bill of exchange was drawn & accepted in Paris, & made payable in England. The drawer & acceptor were living there. No rate of interest was expressed to be payable on the bill:—*Held*: the default being made in England, interest was payable according to the English, & not the French, law.—*COOPER v. WALDEGRAVE (EARL) (1840)*, 2 Beav. 282; 48 E. R. 1189.

*Annotation*:—*Reid*. Allen v. Kemble (1848), 6 Moo. P. C. C.

2222. Liability of drawer or indorser—Rate where bill drawn—Bill drawn in Bermuda—Payable in England.]—*COUGAN v. BANKS (1817)*, Chitty on Bills of Exchange, 11th ed., p. 437.

2223. — — —.]—As a general rule, the *lex loci contractus* governs the construction of contracts, & if a bill of exchange, on the face of

## PART XIII. SECT. 11, SUB-SECT. 2. —D.

2218 I. Five per cent.—(Seven per cent.) Circumstances in which:—*Held*: interest should be allowed at 7 per cent. for 3 months & thereafter at 5 per cent.—*McKAY v. ROCHESTER (1916)*, 8 O. W. N. CAN.

2218 II. — — — If after per per annum.]—Where a note of hand repayment of a loan, with at 5 per cent., without stating or per annum:—the construction that interest was to be calculated without reference to time was contrary to all practice, & the ambiguity was one which might by previous trans- & by

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in

at not

O. W. R. 277; O. W. N. 215.—CAN.

note will bear in

although 5 per cent. was rate of interest agreed 37), 18

note has with interest lodged by a

at

of H. BERRY (1837), 5 IV. L. Rec. 117; 1 Saut. & Co. 151.—IR.

see

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& the proper rate is 5 per cent.—*STANDARD BANK OF CANADA v. ALBERTA ENGINEERING CO., LTD. (1917)*, 1 W. W. R. 1177; 33 D. L. R. 11 Alta L. R. 96.—CAN.

p. — — —.]—In an action on a promissory note payable 2 months after date, with interest at the rate of 20 per cent. per annum, the jury found for plff., allowing interest only at 6 per cent. after the note matured:—*Held*: the rate of interest agreed upon by the terms of the note was the amount which should be allowed by the jury as interest, when allowing interest in the nature of damages, from the maturity of the note to the entry of —*MONTGOMERY v. BOUCHER* 14 C. P. 41

q. — — —.]—An parties fixes the rate of interest a damages, however it may be; & where the jury had allowed only 10 per cent. per a, although they at the same time that defendant had signed the to pay 5 per cent. a new trial was

CAN.

in days after date, with interest at a month, the ct., in the cir- allowed only 6 per maturity.—*DALRY v. (1876)*, 37 U. C. R. 516.—CAN.

a. — — —.]—The drawer of a to pay a discounting

paid. Thereafter an indorser of was pay the a per compound interest the had of the

to be paid by the drawer, but if the of the interest received from to more than the

of V. KURAKDA

cent.)—Plff. sued deft., as maker, & A., as indorser, of two notes, adding a count for interest, & at the trial he offered in evidence a written undertaking signed by deft., & a similar one by A., to allow him interest at the rate of 30 per cent. until payment, in consideration of plff. allowing 3 months time. The trial judge ruled that, the action being joint, evidence of a separate liability against either deft. could not be received, & plff. then took a verdict against both defts. for the amount of the notes & interest at 6 per cent. After judgment had been satisfied, he sued deft. on his undertaking, to recover 24 per cent., the balance of interest agreed to be paid by him:—*Held*: the judgment recovered was a bar to any further claim for interest upon the same notes.—*McKAY v. (1916)*, 20 U. C. R.

Note indorsed

Where a note, when made indorsed, contained an interest leaving a blank for the rate:—*Held*: plffa. were entitled to recover the amount of the note with interest at 3 per cent. as charged.—*BRITISH COLUMBIA & INVESTMENT AGENCY LTD. v. ELLIS (1898)*, 6 D. C. R. 83.—CAN.

Authority to fill up blanks generally, see Part VII., Sect. 1.

1. Liability of either rule where payable—Dated in

—Interest at the rate allowed Canadian law is chargeable upon a note dated & made payable in the (1882), 12 C. P.

2220 II. — — — Dated at Halifax—Question for jury.]—Plffa. sued W. upon promissory notes dated at Halifax, & made payable to plff.'s order in the United States. The notes specified no rate of interest. A verdict was given for plff. with interest. A rule was set aside the verdict was discharged by the Supreme Ct. of N. Y. referred the rate of interest at the time of to

(1878), 2 S. C. R.



which no interest is reserved, is drawn in one country, payable in another, the drawer is, on its dishonour, to pay as damages interest at the current rate in the country where the bill was drawn.

The rate of interest at each place, & whether plff. has sustained any damage requiring the payment of interest, are questions of fact for the jury, but which rate of interest ought to be adopted is purely a question of law for the direction of the judge.

If a bill, drawn at A., is indorsed at B.: *Qu.*: whether the indorsement is a new drawing of the bill at B., so as to carry interest at the rate at B., or only a new drawing of the bill made at A., so as to carry interest at the rate of A.—*GIBBS v. FREMONT* (1853), 9 Exch. 25; 22 L. J. Ex. 21; L. T. O. S. 230; 17 Jur. 820; 1 W. R. 1 C. L. R. 675; 156 E. R. 11.

*Reid, Keene v. Keene* (1851), 3 C. B. N. S. 144; *Branley v. S. E. Ry. Co.* (1869), 12 C. B. N. S. 63; *Rouquette v. Overmann* (1875), L. R. 10 Q. B. 325; *Commercial Bank of South Australia* (1887), 38 Ch. D. 4; *Sharples v. Rickard* (1857), 2 H. & N. 57; *Goodwin* (1859), 6 C. B. N. S. 370; *Scott v. 1862*, 1 H. & C. 219; *Horne v. Rouquette*, B. D. 514.

**2224. — Bill drawn in Canada.** Directors of a co. appointed an agent in Canada, & empowered him to draw bills of exchange upon the co. To discharge claims against the co. in Canada, the agent drew & gave there two bills of exchange. Upon the co. being wound up, the holders of the bills put in claims for the amount, together with interest & damages calculated according to certain statutes of Canada:—*Held*: the proof being against the co. as the virtual drawers, claimants were entitled to the interest & given by the law of Canada, where the bill was drawn.—*Re STATE FIRE INSURANCE CO., p. MEREDITH & CONVER'S CLAIM* (1863), 1 Rep. 510; 82 L. J. Ch. 300; 8 L. T. 146; Jur. N. S. 208; 11 W. R. 416.

**1. Rate paid bank for advance—Five per cent. after advance paid off.**—An accepting house provided credit facilities for a foreign client before the outbreak of war, by accepting bills against or securities, & upon such outbreak client became an alien enemy. The bills matured, & the client could not remit funds to meet them, & the accepting house, in order to meet the bills, obtained from the Bank of England an advance at 2 per cent. above the current bank rate. The accepting house afterwards paid off the bank with the agreed interest. An order having been made vesting the property of the alien enemy in the custodian under the Trading with the Enemy Acts:—*Held*: the accepting house was entitled to charge against the alien enemy what it had actually paid to the Bank of England, but after the bank was paid off only simple interest at 5 per cent., without any charge for commission.—*Re TILLMANN* 34 T.

**2226. Variation of rate—Note as evidence.** deposited a sum of money with a banker, & received a note, by which the banker to pay the principal at 10 days' sight, 3 per cent. interest to the day of dishonour.

The banker paid interest on the note, but at the same time told the customer that he would not, in future, pay more than 2½ per cent., & in his presence altered the terms of the note by striking out three & inserting two and a half:—*Held*: the note was admissible in evidence to show the terms on which the deposit was made.—*SUTTON v. TOOMER* (1827), 7 H. & C. 416; 1 Man. & Ry. K. B. 125; 6 L. J. O. S. K. B. 49; 108 E. R. 778.

—*Conrad, Seale v. Norton* (1847), 9 M. & W. 309; *Beon*, [1891] 1 Ch.

OF

Act, s. 57 (1) (c).

**2227. Liability of acceptor—Inland bill—Payable after sight.**—As the provisions of 9 & 10 Will. 3, c. 17, respecting protests of inland bills do not apply to such bills as are made payable after sight, an acceptor of such a bill, who refuses payment on the third day of grace, is not liable to any charge for the noting of the bill.—*LEFFLEY v. MILLIS* (1791), 4 Term Rep. 170; 100 E. R. 955.

—*Conrad, Kennedy v. Thomas*, [1894] 2 Q. B. 599; *Haynes v. Birks* (1894), 3 Bos. & P. 599; C. P. 219.

**In renewal of bill noted.**—After a bill of exchange became due, & whilst it was in London, where it had been sent for presentment for payment, the person, who had indorsed it to plff., came to him with another bill for the same amount, & prevailed on him to take it for & on account of & in renewal of the first bill. Before the second bill became due, & without delivering it back, plff. brought an action upon the first bill against the acceptor:—*Held*: he could not recover even the expenses of noting

Cr. & J. 405; 2 Tyr. 438; 1 L. J. Ex. 145; 149 E. R. 172.

v. Hudson

**2229. bill.**—Defts., bankers at Alexandria & Liverpool, undertook to accept the drafts of plffs. Alexandria firm, plffs. undertaking to put them in funds to meet the bills at maturity, & defts. receiving ½ per cent. for the accommodation. Bills were accepted by defts. under such arrangement, & plffs. duly provided defts. with funds exceeding the amount of the acceptances. Before the bills became due, defts. bank stopped, & they gave notice to that they would be unable to meet the plffs. arranged with another house in Liverpool to take up the bills, & they were obliged to pay to the holders the expenses of protesting the bills at Liverpool & Alexandria. In an action defts. for breach of the contract contained in their letter of credit:—*Held*: plffs. were entitled to recover the notarial expenses.—*PRINCE v. ROYAL BANK OF LIVERPOOL* (1870), L. R. 5 Exch. 41; 21 L. T. 830; 18 W. R. 463.

*Annotations*:—*Feld, Re General South American Co.* (1877), 7 Ch. D. 637. *Duff, Re English Bank of the River Plate* Ex p. Bank of Brazil, (1893) 3 Ch. 428; *Banque Populaire de Rienne v. Cayé* (1895), 1 Com. Cas. 57. *Held, Re Oriental Commercial Bank* (1871), L. R. 12 Eq. 501;

lect. 11.

after action brought by him, cannot recover the costs of such action against the parties liable to him for the sum paid on the bill.—*ROACH v. THOMPSON* (1880), 4 C. & P. 194; *Mood. & M.* 487, N. P.

**2246.** — — — — —.]—Pltf. having accepted a bill for deft.'s accommodation, defended an action brought by the indorsee, & finally paid the amount with the costs of the action. Pltf. brought *assumpsit* for money paid, & the jury were directed that, if deft. requested pltf. to undertake the as to which there was some evidence but it proved, the costs were recoverable as money paid to pltf.'s use:—*Held*: the direction was right, & the costs recoverable under the count for money paid.—*GARRARD v. COTTRELL* (1847), 10 Q. B. 679; 116 E. R. 258.

*Annotation*:—*Mentd.* *Crampton v. Walker* (1860), 3 E. & E. 321.

actions were brought the maker & indorsers of a note, & upon a demurrer to the replication judgment was given for deft., & pltf. made one application to amend in three cases:—*Held*: (1) deft. was entitled only to the costs as for one case, in attending to oppose it; (2) as to the ordinary fees disbursed to counsel to argue the demurrer in the three cases, & the ordinary taxable costs occasioned to deft. by the demurrer in each case, they might be allowed to deft.—*HANK OF BRITISH NORTH AMERICA v. AINLEY*, 7 U. C. R. 511.—*CAN.*

— Action against maker & indorser.—Where the maker & indorser of a note had been sued & together by the same but pleaded separately, the an exception to the

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& indorser.]—Where pltf.

the acceptor & indorser, the acceptor paid the claim him, but without the costs, & judgment was entered & execution issued against him for their amount & the costs of the suit against the indorsers, the execution was restrained to the costs against the acceptor alone.—*GILLASPIE v. CAMERON* (1846), 3 U. C. R. 45.—*CAN.*

m. — Two actions on — Against different parties.]—A., at the assizes in Toronto, sued B., as one of the indorsers on two notes, one for \$27 & the other for \$76. A. on the note for \$27, but having the note for \$76, he entered a *prosequi* as to that part of his claim. A. then brought another action in a district ct. against C., the maker, & D., another indorser, on the note for \$27. On a motion under 5 Will. 4, c. 1, to restrain pltf. from recovering more than the full costs of one suit: the Act did not apply.—*OF BRITISH NORTH AMERICA v.* (1859), 6 U. C. L. J. O. S.

on some bills.]—Where in an action on bills of exchange accepted by deft., it appeared that some of the bills statute barred:—*Held*: pltf. was to judgment on the bills not statute barred with costs, but, on regard should be had to the upon which he had failed.—*r. HAGRI* (1908), 9 W. L. R. 462.—*CAN.*

of his own risk.]—In an on two promissory notes:— as deft. had conducted the at his own risk, principally as to the ownership of the notes, perhaps he to pay full costs, but to all the circumstances of action to be paid 1 deft. be fixed.—*HANNAH v.* 9 (1917), 13 O. W. N. 215.—*CAN.*

n. — Costs incurred by claim (improperly framed.)—Where the claim of pltf. as set out in the statement of claim was insufficient to establish a right of action, pltf. was allowed to amend, & judgment entered for the amount of the note, with costs of a default judgment, less deft.'s costs of defence, as they would not have defended, had the pleading been properly framed at first.—*BROX v. BOKNEY* (1910), 14 W. L. R. 324.—*CAN.*

q. — Verdict for defendant set

**2247.** — — — — —.]—In an action by the acceptor against the drawer of an accommodation bill, on his implied contract of indemnity:—*Held*: pltf. was not entitled to recover costs incurred in defending an action brought against himself upon the bill.—*BEECH v. JONES* (1848), 5 C. B. 696; 136 E. R. 1052.

**2248.** — — — — —.]—An affidavit to hold to bail stated that deft. was indebted to deponent in £337, i.e., £267 16s., being the amount of debt, & £69 4s., the amount of costs, respectively paid by deponent to C. in an action on a bill of exchange, drawn by B. & accepted by deponent on the request of deft., conveyed through B. or his clerk, & for the accommodation of deft.:—*Held*: the affidavit disclosed a good cause of action for the costs.

There can be no doubt that the party, for whose accommodation a bill is accepted, is liable, not only for the amount of the bill, but also the costs

in second trial upheld on An issue was sent to a jury, whether a bill of exchange, granted by pursuer, had not been presented within business hours, & a verdict was returned for defender. The ct., on a bill of tions, set aside the verdict a new trial, on the ground that case had been improperly withdrawn by the judge from the jury as merely involving a question of law; & on the new trial pursuer obtained a verdict, which was afterwards confirmed by the ct. on a bill of exceptions & motion for new trial:—*Held*: as defender was responsible for the course taken by the judge in erroneously withdrawing the case on the first trial from the consideration of the jury, pursuer was entitled to the expenses incurred by him in both trials, & in the discussion on the bill of exceptions, etc.—*NEILSON v. LEIGHTON & HOUNSWORTH* (1844), 16 Sc. Jur. 333.—*SCOT.*

r. — Effect of tender.]—On appeal from an order of a county ct. judge setting aside a judgment upon a promissory note, it appeared that on the morning of the day when a note became due the debtor went to a rural post office to mail a letter containing the amount of money due on the note & addressed to the bank holding same, but found the post office closed. He did not mail the letter until the following day, & in the meantime the creditor had paid the note, & taken it to his solr. with instructions to collect it. The instructions of debtor to the bank were to use the money to pay the note, but the note having been retired the bank placed the money to the credit of the creditor, & wrote him to that effect. He did not receive this letter until four days after he had retired the note, & in the writ was issued by his solr. on debtor. The letter saw the solr. & offered to pay the but refused to pay the c —*Held*: debtor was liable for the to the date of the tender, & as

was entitled to sign final judgment for of the note & costs.—

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5 Will. 4, c. 1. in

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## PART XIII.—LIABILITY OF PARTIES.

which the acceptor has been called upon to (PARKE, B.).—**STRATTON v. MATHEWS** (1848), Exch. 48; 6 Dow. & L. 229; 18 L. J. Ex. 5; 12 Jur. 924; 154 E. R. 750; *sub nom.* **STRETTON v.** 12 L. T. O. S. 130.

*Crampton v. Walker* (1860), 3 E. & E.

Accommodation bills generally, see Part X., Sect. 3.

**2249. — Bill deposited as security—Liability of indorser.**—H. deposited with deft. as a security for goods sold, a bill accepted by pltf., for which pltf. had received no value. H. afterwards paid for the goods, & asked for the restoration of the bill; but deft. indorsed it for value to G. who sued pltf. & recovered:—*Held*: pltf. might recover of deft. the amount of the bill in an action for money paid to the use of deft., but not the costs of the action by G. against pltf.—**BLEADEN v. CHARLES** (1831), 7 Bing. 246; 5 Moo. & P. 14; 9 L. J. O. S. C. P. 82; 131 E. R. 95.

*Annotations*:—*Distd.* **Asprey v. Levy** (1847), 16 M. & W. 551. *Consd.* **Osborn v. Donald** (1803), 2 New Rep. 518. *Held.* **Driver v. Burton** (1832), 16 Jur. 373; **Jones v. Orchard** (1855), 3 C. L. R. 1275.

**2250. — After payment by acceptor—Liability of drawer.**—Pltf. owed deft. £50 upon a bill of exchange drawn by the latter upon & accepted by the former. Before the bill arrived at maturity pltf. called a meeting of his creditors, which was attended by B. on the part of deft. At that meeting it was agreed that the several creditors of pltf. should receive a composition on the amount of their respective debts, & a deed of composition was prepared, & executed *inter alia* by

B. on behalf of deft., & the amount of the tion was afterwards paid to deft. The holder of pltf.'s acceptance afterwards sued pltf. thereon, & compelled him to pay the amount, with £6 18s. for interest, & £2 10s. for costs:—*Held*: pltf. was entitled to recover from deft. the amount of the bill & interest.—**HAWLEY v. BEVERLEY** (1843), 6 Man. & G. 221; 6 Scott, N. R. 837; 1 L. T. O. S. 256; 134 E. R. 873.

*Annotation*:—*Distd.* **Davey v. Baines** (1892), 9 T. L. R. 29.

**2251. Holder against drawer or indorser—Liability of acceptor.**—Where the drawer or indorser of a bill is sued by the holder, & pays the costs of the action, he has no legal remedy over, against the acceptor, for the amount of those costs, unless there be an express promise to pay them.—**DAWSON v. MORGAN** (1820), 9 B. & C. 618; 7 L. J. O. S. K. B. 301; 109 E. R. 280.

*Annotations*:—*Distd.* **Stovin v. Taylor** (1833), 1 Nev. & M. K. B. 250. *Held.* **Garrard v. Cottrell** (1847), 10 Q. B. 679.

**2252. Indorser against drawer—Liability of acceptor.**—*Qu.*: whether drawer may sue acceptor for costs of action against the former.—**STOVIN v. TAYLOR** (1833) 1 Nev. & M. K. B. 250.

**2253. Bankruptcy proceedings against acceptor.**—The holder of a dishonoured bill of exchange brought an action against the acceptor, & simultaneously with it instituted proceedings against him in bkpcy. The action having been stayed on payment of the debt & costs, pltf. claimed to hold the bill until he should have obtained the amount of his costs in bkpcy.:—*Held*: he was not so entitled.—**COWS v. TAYLOR** (1854), 18 Jur. 963.

**Whether right lost—After payment of principal sum.**—See Part XIV., Sect. 2.

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Tay. 2) Note d' indorsed in in another.)— & indorser  
w. Action of a for made & in the B. district, but discounted in the J. district, by the agent of pltf., the indorsers, laying the venue in the J. district. On judgment by default:  
Bench COMMERCIAL KERR (1849), U. C. R. 329.—CAN.  
for \$300, & gave it back to deft. to hold until the latter should be free from a certain liability as surety. After he became freed he refused to give up the note, & destroyed it, & an action was brought for breach of his contract to return the note. The was referred to a referee.  
the note & interest:—*Held*: the claim was within the jurisdiction of the county ct., & pltf. was entitled to costs upon the county ct. scale only, & deft. was entitled to set off the difference between county ct. & High Ct. costs of the defence.—**JOHNSON v. KENYON** (1889), 13 P. R. 24.—CAN.  
y. — In an action brought in the High Ct. to compel defts. to deliver up a promissory note for \$250, or for damages for its tion, it was determined that the note  
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## 340 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

Sect. 11.—Measure of  
XIV. Sects. 1 & 2 ;

. 6. Part

### . 6.—OTHER

**2254. Incidental expenses—Liability of indorser.**—Where a bill indorsed over is not duly paid, the donee may charge the indorser with interest, change, & other incidental expenses beyond the amount of 5 per cent., if such charges be reasonable, warranted by usage, & not made a colour for usury. The charge of 10s. per pagoda on a bill returned protested from India is not excessive, though it was taken in payment in England at the rate of 6s. 6d. per pagoda.—**AURIOL v. THOMAS** (1787), 2 Term Rep. 62 ; 100 E. R. 20.

*Annotations* :—**Conrad**, *Williams v. Ayers* (1877), 3 App. Cas. 133. **Reid**, *Marsh v. Martindale* (1892), 3 Bos. & P. 151.

**2255. Liability of accommodated drawer.**—**HARDCASTLE v. NETHERWOOD**, No. 2181,

**2256. Liability of acceptor—Commission & telegrams.**—Defts., bankers at Liverpool, by their letter of credit to plffs., grain merchants at Alexandria & Liverpool, undertook to accept the drafts of plffs.' Alexandria firm, plffs. undertaking to put them in funds to meet the bills at maturity, & defts. receiving ¼ per cent. for the accommodation. Bills were accepted by defts. under such arrangement, & plffs. duly provided with funds exceeding the amount of the bills. Before the bills became due, defts. stopped, & they gave notice to plffs. that they would be unable to meet the bills. Plffs. arranged with another house in Liverpool to take up the bills, paying 2¼ per cent. commission, & they had also to incur expense in telegraphic

communications between Liverpool & Alexandria. In an action against defts. for breach of the contract contained in their letter of credit :—**Held** : plffs. were entitled to recover the commission & telegraphic expenses.—**PREHN v. ROYAL BANK OF LIVERPOOL** (1870), L. R. 5 Exch. 92 ; 39 L. J. Ex. 41 ; 21 L. T. 830 ; 18 W. R. 463.

*Annotations* :—**Foll.** *Re Oriental Commercial Bank* (1871), L. R. 12 Eq. 501 ; *Re General South American Co.* (1877), 7 Ch. D. 637. **Dist.** *Re English Bank of the River Plate*, *Ex p.* Bank of Brazil, [1893] 2 Ch. 438 ; *Banque Populaire de Bienne v. Cavé* (1895), 1 Com. Cas. 67. **Reid**, *Larios v. Bonany Y Gurety* (1873), L. R. 6 P. C. 346 ; *Barnett v. Hart* (1903), 48 Sol. Jo. 14. **Ment.** *Wallis Chlorine v. American Alkali Co.* (1901), 17 T. L. R. 100. *v. United Counties Bank*, [1920] A. C. 102.

**2257. ——— & brokerage & postage.**—**Held** : the holder of a bill of exchange, drawn abroad & dishonoured in England was not entitled to recover charges for banker's commission, brokerage & stamps for postage.—**BANQUE POPULAIRE DE BIENNE v. CAVÉ** (1895), 1 Com. Cas. 67.

**2258. Reasonable expenses—Liability of acceptor.**—The drawer of a bill of exchange in a foreign country, accepted in England, is entitled, upon the bill being dishonoured & protested, to recover from the acceptor not only the amount of the bill with interest, & notarial & telegraphic charges, but also all such reasonable expenses as may have been caused by the dishonour.—**Re GENERAL SOUTH AMERICAN CO.** (1877), 7 Ch. D. 637 ; 47 L. J. Ch. 67 ; 37 L. T. 599 ; 26 W. R. 232.

*Foll.* *Re Gillespie, Ex p. Roberts* (1886), 6 Q. B. D. 702. **Dist.** *Banque Populaire de Bienne v. Cavé* (1895), 1 Com. Cas. 67. **Reid**, *Re Gillespie, Ex p. Roberts* (1886), 18 Q. B. D.

**2259. Liability of indorser or drawer—Expenses of special messenger to give notice of dishonour.**—**PEARSON v. CRALLAN**, No. 1742, ante.

## Part XIV.—Discharge.

2 Act, a.

### . 1.—IN GENERAL

**2260. By mutual credit—Bankruptcy.**—Mutual credit may be constituted, though the parties do not mean particularly to trust each other, as if a bill of exchange accepted by A. get into the hands of B., & B. buy goods of A., there is mutual credit A. & B., though A. do not know that the

bill is in B.'s hands.—**HANKEY v. SMITH** (1789), 3 Term Rep. 507, n. ; 100 E. R. 703.

*Collins v. Jones* (1830), 10 B. & C. 777. **Reid**, *v. Bank of Bengal* (1836), 1 Moo. P. C. C. 150 ; *Astley v. L. & C. P.* 714.

*See, further*, BANKRUPTCY & INSOLVENCY, Vol. 1, 389 et seq.

**Bill not satisfied by legacy.**—A negotiable bill of exchange is not satisfied by a legacy.—**CARR v. EASTARROCK** (1797), 3 Ves. 561 ; 30 E. R. 1156.

### XIII. SECT. 11. SUB-SECT. 6.

a. ——— *Bank charges.*—**Held** : plffs. right to bank charges as part of a bill of exchange.—**OWAN & CO. v. C. L. T.** 514.—**CAN.**

**2261. Reasonable expenses—Liability of drawer.**—In an action by indorser against drawer of a bill of exchange, the bill being in the hands of a third party, who claims a property in it, plff. may, in certain circumstances, recover, as money paid, cash paid by him on account of the bill. **Example** : one case entitling plff. so to recover is when plff. paid money with deft.'s knowledge & assent.—**HUNTS v. TALLON** (1842), Arm. M. & O. 299.—**IR.**

### PART XIV. SECT. 1.

b. *Payment in due course neces-*

*ary—Unless party re agrees otherwise.*—In cir- a bill can only be by in due course. Any payment must be made in money to the party to whom payment is to made consents to some other form of payment or satisfaction.—**CALOARY BAKING & MALTING CO., LTD. v. ROBERTS** (1917), 1 W. W. R. 670.—**CAN.**

c. *Payment in due course necessary.*—The drawer of having paid it two of the d to recover the amount ; 1<sup>st</sup> defence names were only on the b to the bank with whom the bill had been discounted :—**Held** : the bill

L. R.

2267 i.

on a foreign bill returned for a count for

2267 ii.

of

. R.



party does not discharge  
of a bill of exchange may  
give a discharge to a party on it, which shall not  
discharge one liable prior to him. It is otherwise  
if the discharge is given to one subsequently  
—SMITH v. KNOX (1799), 8 Esp. 46, N. P.

—Mentl. Re Peirson & Sammon,  
1 Desc. & Ch. 364.

the payee handed over the amount to  
trustees. In an action by the payee against  
the surety:—*Held*: (1) the payment did not  
operate as a satisfaction of the debt; (2) the  
acceptance of the money by the payee was not an  
act done against the faith of the contract with the  
surety so as to discharge the surety.—PERRY v.  
COOKE (1871), L. R. 6 Q. B. 790; 40 L. J. Q. B.  
25 L. T. 90; 19 W. R. 1112.

v. Bradford Banking Co.,

### —BY PAYMENT AND SATISFACTION.

1882 Act, ss. 38 (3), 59 (1).

#### 1. —BY WHOM PAYMENT AND SATISFACTION MAY BE MADE.

##### A. Drawee, or Maker.

**2263. Maker—Whether indorser discharged.**—If the drawer of a note be sued by the indorsee, & the bail for the drawer pays the debt & costs, this absolutely discharges the indorser, as much as if the drawer himself had paid off the note.—HULL v. PITFIELD (1744), 1 Wils. 46; 95 E. R. 484.

**2264. — At maturity—Re-issue of note.**—In an action by holder against payee of a note, payable to debt. or order on demand, for £200, the plea averred that debt. indorsed it at the request & for the accommodation of the maker, for the sole purpose of depositing it with B. as security for a debt of £200 due from the maker to B., that the maker afterwards paid the debt to B., who thereupon redelivered the note to the maker:—*Held*: the above statement was in effect an averment that the note had been paid by the maker, & the plea disclosed a sufficient defence.—BARTNUM v. CADDY (1838), 9 Ad. & El. 275; 1 Per. & Dav. 207; 1 Will. Woll. & H. 724; 8 L. J. Q. B. 31; 112 E. R. 1011.

Glascock v.  
n.

Q. B. D.  
M. & W. 174.

Right to re-issue instrument after negotiation,

**2265. — Avoided as fraudulent preference—Whether joint maker discharged.**—The payee of a promissory note, made by principal & surety, accepted the amount thereof from the principal, in good faith, & without notice that the payment was a fraudulent preference. The principal afterwards entered into a composition deed for the benefit of his creditors; the trustees under the deed avoided the payment, as a fraudulent

of parties to joint & joint &

1882 Act, s. 59 (2).

**2266. Whether acceptor discharged—Bill payable to third person.**—If A. draws a bill payable to B. or order on C., & C. accepts but does not pay it, & A. takes it up & indorses it to D., the latter cannot sue C.—BECK v. ROBLEY (1774), 1 Hy. Bl. 89, n.; 126 E. R. 54.

95. Dmd. 7 M. & W. 174.  
Consd. Jones v. Broadhurst (1850), 9 C. B.  
Glascock v. Halls (1889), 59 L. J. Q. B. 61.  
v. Searies (1788), 1 Hy. Bl. 28; Bartnum v. C.  
9 Ad. & El. 275; Jewell v. Parr (1853), 12  
, 1 Moo. & P. 117.

**2267. — Where the drawer pays the**  
the acceptor is entirely discharged.—  
(1788), 1 Hy. Bl. 88; 126 E. R.

173.

v. J. Q. B.

**2268. — Satisfaction.**—Where an indorsee for transfers the bill, which is returned to him after it has become due, he may recover against the acceptor, although his indorsee before the retransfer received satisfaction from the drawer.—BUZZARD v. FLECKNOE (1816), 1 Stark. 383, N. P.

**2269. — In an action by indorser**  
against acceptor of a bill of exchange a plea stating the satisfaction of the bill by the drawer will not be good, unless it shows that plff. is not the lawful holder of the bill.—AGRA & MANTHEMAN'S BANK v. LEIGHTON (1866), L. R. 2 Exch. 56; 4 H. & C. 36 L. J. Ex. 33.

Maynard  
C. P. 695; Girvin v. Grepe (1879), 13 Ch. D. 174;  
Stears (1882), 47 J. P. 66; Solomon v. Davis  
& El. 83; Banks v. Jarvis, [1903] 1 K. B. 549.

in due course all rights of

Hoy v. WING TUNG  
Hong Kong L. R. 69.—HONG KONG.

of dis-  
holder, or maker &  
in part  
a discharge  
or maker.  
), 3 E. C.

to meet the note, they could  
not recover the amount against M.;  
(JONES, J., & HARRISMAN, J.) they  
were not precluded from doing so.—  
ROBERTSON v. MOORE (1879), 4 Q. B.  
545.—CAN.

—The that the  
members of a firm which has under-  
to

d. Nolle prosequi against indorser  
action on a note against the maker &  
M

In an

The ct. had ruled that he could not

issue,

It is

# 342 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

2. *By payee and satisfaction: Sub-sect. 1, L. J. Q. B. 445; 15 L. T. O. S. 226; 14 Jur. 699; 117 E. R. 548.*

**2270. — Payment by drawer or**  
Satisfaction of a bill as between a drawer or indorser & an indorsee, whether before or after the bill becomes due, does not necessarily enure as a satisfaction on behalf of the acceptor, or operate to discharge him from liability to the indorsee.

To a count on a bill of exchange for £49, by indorsers against acceptor, the latter pleaded, that, after the indorsement, & before the commencement of the action, the drawer delivered to plffs., & plffs. accepted, goods of the value of £50, in satisfaction & discharge of the bill, & of all damages & causes of action in respect thereof, & that plffs., from the time of the satisfaction of the bill, had always held same against the will & consent of the drawer, & so still held same, & that plffs. had commenced the action, & prosecuted same, against, & in opposition to, the will & consent of the drawer:—*Held*: after verdict for deft., the plea was no bar to plffs.' right to recover against deft. on the bill.—*JONES v. BROADHURST* (1850), 9 C. B. 173; 137 E. R. 858.

*Consid.* *Belshaw v. Bush* (1851), 11 C. B. 191. *Goodwin v. Greiner* (1852), 18 Q. B. 767. *Consid.* *in v. Egginton* (1855), 10 Exch. 845; *Cook v.* (1863), 13 C. B. N. S. 543; *Thornton v. Maynard* (1870), L. R. 10 C. P. 495. *Distd.* *Solomon v. Davis* (1883), Cab. & El. 83. *Redd.* *Kemp v. Bails* (1854), 10 Exch. 607; *Re Howe, Ex p. Derenburg*, [1904] 2 K. B. 483. *Mentd.* *Kismet v. Dewhurst* (1851), 3 Mac. & G. 587.

**2271. — Holder retaining bill & releasing acceptor.**—The drawer or indorser of a dishonoured bill of exchange becomes entitled, by paying the amount of it to the holder, to an immediate right of action against the acceptor, although the holder to retain the bill as security for costs, & the right of such drawer or indorser to sue the acceptor is not affected by the circumstances that the holder, after receiving the amount & before of his costs, has charged the acceptor in for the amount of the bill & then rehim from custody.—*WOODWARD v. F.* L. R. 1 Q. B. 55; 9 B. & S. 991; 1 J. Q. B. 30; 10 L. T. 557; 17 W. R. 117.

**2272. — Indorsee agent for drawer.**—In an action by indorsee against acceptor of a bill of exchange, it appeared that when the bill became due the drawer, who was also the payee, paid plff. the amount of the bill & left it in his hands, that he might sue the acceptor upon it:—*Held*: it was competent to the drawer to make plff. his agent for the purpose of suing on the bill, & the liability of the acceptor was not discharged. 15 Q.

## PART XIV. SECT. 2, SUB-SECT. 1.

**2270 L. Whether acceptor discharged.**—*(Pro bank—Payment of dividend on bill in bankruptcy of drawer.)*—Under a commission of bankruptcy, against the drawer of a bill of exchange, the holder proved the bill, & was paid a dividend, & handed over the bill to the assignee:—*Held*: an action, by the assignee against the acceptor, to recover the amount of the bill, was maintainable.—*BLACK v. O'KELLY* (1839), Jo. & Car. 743.—*IM.*

O., B., & Deft., was indorsed by them bank. On the day the note fell 1. & B. respectively paid the \$2,000, & \$5, 24,200.

for it. Plff.

Note in  
Deft. gave a to for  
who agreed to hold it as liability he had for  
in the note to  
in order to for G.'s  
a bank, & was obliged to take it up at maturity, & two G.  
he transferred it to the money for deft.,  
note

**2273. — Indorsee trustee for drawer.**—In an action by indorsee against acceptor of a bill of exchange, payment by the drawer is no defence, but only converts the indorsee into a trustee for the drawer of the amount of the drawer's payment.—*THORNTON v. MAYNARD* (1875), L. R. 10 C. P. 44 L. J. C. P. 382; 33 L. T. 433.

*Alcoy & Gandia Ry., etc., Co. v. Greenhill* (1897), 76 L. T. 452; *Galula v. Pintus* (1911), 10 Com. 100. *Mentd.* *Solomon v. Davis* (1883), Cab. & El.

Effect of part payment.]—See Sub-sect. 5,

### C. Indorser.

See 1882 Act, s. 59 (2).

**2274. Right to sue maker without consent of indorsee.**—The indorser of a promissory note paid the indorsees in default of the maker, & then sued the maker in the name of the indorsees without their authority, & obtained a verdict. The amount of the verdict having been paid, & an execution issued for costs, the ct., on motion, made a rule absolute to stay all proceedings without costs on either side.—*COLEMAN v. BIEDMAN* (1849), 7 C. B. 871; 137 E. R. 345; *sub nom.* *COLLMAN v. BIEDMAN*, 7 Dow. & L. 121; 18 L. J. C. P. 263; *sub nom.* *COLMAN v. BEADMAN*, 13 L. T. O. S. 189.

Effect of part payment.]—See Sub-sect. 5, *post*.

### D. Stranger.

**2275. Whether acceptor discharged.**—Payment by a stranger of the amount of a bill of exchange to the bankers, at whose house the bill is, by the acceptance, made payable, under an arrangement with such bankers, whereby the party paying obtains possession of the bill for a collateral purpose of his own, is not a payment of the bill by the acceptor. Nor can such payment, if made before the bill becomes due, be considered as a payment for the honour of an indorser.

Where also to a count by the exors. of A., the indorser, against B., C., & D., the acceptors, of a bill, defts. pleaded payment, & the evidence was that A. had placed the bill in the hands of E., in order to be presented, who improperly discounted it, & to regain possession of it, paid the amount into the bankers of B., C., & D., & then returned the bill to A.:—*Held*: that evidence negatived the plea.—*DEACON v. STODHART* (1841), 2 Man. & G. 317; 2 Scott, N. R. 557; 133 E. R. 767.



**2276.** —.—]—Payment within 55 Geo. 3, c. 184, 19, of a bill of exchange, so as to render it no negotiable, must be a payment by the party immediately liable.

Where a bill of exchange, indorsed in blank by the drawer, was overdue & unpaid, & an action had been commenced by C., the holder, against the acceptor, & pltf., who was a stranger to the bill, paid the amount of the bill & costs to C., who delivered the bill to him:—*Held*: pltf. might maintain an action on the bill against the drawer, & the bill did not require a fresh stamp, as being re-issued after payment.—**THOMAS v. FENTON** (1847), 5 Dow. & L. 28; 2 Saund. & C. 68; 18 L. J. Q. B. 362; 11 Jur. 633.

*Annotation*:—**Consd. Jones v. Broadhurst** (1850)

**2277.** —.—]—To an action by indorsee acceptor of a bill of exchange for £55 debt, that he accepted the bill for the accommodation of the drawer, & without consideration, that the drawer indorsed it with other bills to pltf. as security for repayment of £30 then advanced by them to the drawer, & that after action pltf.'s claim on the bill was satisfied & discharged by payment to them, by the acceptor of one of the other bills, of the sum of money so advanced, & all interest thereon, & that from thence hitherto pltf. held (& still held) the bill declared on, without value or consideration:—*Held*: the plea was bad, on the ground that the payment relied on as made by a stranger was not alleged to have been for & on account of the debt, & to have been by debt.—**KEMP v. BILLS** (1854), 10 Exch. 607 24

J. Ex. 47; 3 C. L. R. 105; 156 E. R. 581.

*Annotations*:—**HALE, JR. HOWE, EX P. DECHENOUR** L. J. K. B. 594. **Mentd. Tetley v. Wanless**

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**2278.** —.—]—Payment to keep bill alive—Liability to party paying.—Pltf. paid to A., the holder of a bill of exchange indorsed in blank, the amount of principal, interest, & costs due on the bill, for the of taking it up on their own account & it alive, & becoming the holders of it

A., on the other hand, at the time parted with it to them, being under the impression that they had paid it on behalf & in discharge the acceptors. In an action subsequently brought by pltf. as holders against debt, as the drawer of the bill:—*Held*: pltf. were entitled to maintain

action, notwithstanding the impression under

A., the previous holder, parted with the bill, it being incumbent on debt., in order to disentitle pltf. to sue on the bill, to show that it had been paid for the purpose of discharging the acceptors, & whatever rights A. might have, or might had, against pltf., debt. was not them up in answer to pltf.'s action

The trial judge directed the jury that, if pltf. paid the bills on behalf & in of the acceptors, or by their conduct or led the holder to believe that they did so pay, then, in either of those cases, the jury should find for debt., if they should be of opinion to the contrary in

case, then their verdict ought to be for :—*Held*: the direction was right.—**LYON v.** (1866), 18 L. T. 28; 16 W. R. 437.

XIV. SECT. 2, SUB-SECT. 1. for

no

as an  
acceptor

40

**2279.** —.—]—Note payable on demand—Mortgage as collateral security—Sum received by indorser.]

Deft. being indebted to W., gave him as security promissory note, payable on demand to W order, & afterwards as additional security a m of certain property. By a transfer, to which debt. was not a party, W. transferred the mtge. to H. for a sum in excess of the debt secured by the note. The note remained in W.'s hands, who indorsed it to pltf. for value. Pltf. took the note in good faith without notice of the circumstances. In an action by pltf. as indorsee against debt, as maker of the note:—*Held*: the note had not been re-issued, or even paid, & pltf. was entitled to recover.—**GLASSCOCK v. BALLS** (1889), 24 Q. B. D. 18; L. J. Q. B. 51; 62 L. T. 103; 38 W. R. 155; T. L. R. 57, C. A.

**2280.** Whether maker discharged—Satisfaction.]

Deft., an officer of the British Army, when on in India gave to pltf., a firm of there, a promissory note for 1,500

interest, to secure repayment of a sum by them to him. The father of debt., in to an application by pltf., made them an offer of a less sum "in full settlement" of their claim against debt. Pltf. declined that sum, & again asked for what amount debt.'s father would "settle" his son's debt. The father replied offering 650 Rs., & enclosing a draft for that amount. Pltf. cashed the draft & retained the

Pltf. then brought an action against on the promissory note, claiming the amount thereof, & interest, less the amount of the draft:—*Held*: pltf. having made a settlement with the father could not recover from debt., whose debt

**CHAND v. TEMPLE**, (1911) 2 K. B. 380; 80 L. J. K. B. 1155; 105 L. T. 277; *sub nom.* **PUNAMCHAND SHRICHAND & Co. v. TEMPLE**, 27 T. L. R. 430 Sol. Jo. 519, C. A.

*E. Banker.*

See 1882 Act, ss. 60, 62; **BANKERS & Vol. III.**, pp. 228, 237-243.

1862 Act, s. 59 (3).

Accommodation bills generally. Part  
Sect. 3, & Sect. 8, sub-sect. 1, ante, 10,  
2, B.

**2281.** Payment by drawer—Whether acceptor

A banker may recover against the of an accommodation bill, deposited him as a collateral security before it became although the party who deposited the bill had it in his hands when

from the drawer.—**BOSANQUET v.** (1814), 1 Stark. 1, N. P.

*Annotation*:—**Reid.** v. Benton (1847), 9 Q. B.

**2282.** —.—]—At maturity—Whether bill charged.]—To a declaration on a bill of exchange, by indor against acceptor, debt. pleaded, that

by have it & of C. P. 491.  
[BIR taken up by paper—*Whether acceptor discharged.*]—Pltf. agreed to sell certain cattle to M., on condition that M. would procure some one to accept a draft for the price. Debt., at the request of M., accepted a draft for the amount, & a second draft

1,

the bill was accepted for the accommodation of the drawer & without any consideration for the acceptance, that after the acceptance it was negotiated by the drawer for his own use, & paid by him when it became due, & that afterwards it was re-issued by him without a fresh stamp, & indorsed to plff. with a notice of the premises:—*Held*: (1) the plea contained one defence only, viz., the re-issuing of the bill in the circumstances without a fresh stamp; (2) the re-issuing the bill without a fresh stamp was a good defence, inasmuch as being an accommodation bill, which had been satisfied by the drawer, who was the party ultimately liable upon it, it was no longer a negotiable instrument, & could not be put into circulation again without a fresh stamp, as required by 55 Geo. 3, 1814, s. 19; (3) it was a defence that did not arise only on the evidence, but might well be pleaded, inasmuch as s. 19 of the above Act inflicted a penalty on re-issuing a bill of exchange after it had been paid, & a bill re-issued contrary to such prohibition became void. *LAZARUS v. COWIE* (1812), 3 Q. B. 459; 2 Gal. & Dav. 187; 11 L. J. Q. B. 310; 6 Jur. 851; 114 E. R.

13 B.

*13 C. B. N. S. 543; Re Overend, Gurney, Ex p. Lister*  
L. R. 6 Q. B. 344

**2283.** — In an action by indorsee against acceptor of a bill of exchange, deft. pleaded that he accepted for the accommodation of the drawer, that the drawer negotiated the bill for his own use, & paid it when it became due, that it was afterwards delivered by the holder to the drawer, who then, without the consent of deft., indorsed it to plff., without having it re-stamped. The bill, on being produced at the trial, had the name of the drawer on the back, & a memorandum of the date when it was due on the face of it, & it appeared that the drawer delivered it to plff. after that date:

*Held*: that was no evidence to go to the jury in support of the allegations in the plea, that the bill negotiated by the drawer, & paid at maturity, whether the plea was good.—*JEWELL v. PARSONS* (1853), 13 C. B. 909; 22 L. J. C. P. 253; 17 Jur. 975; 1 C. L. R. 454; 138 E. R. 1400.

*L. R. 4 Q. B. 32; Steward v. Young* (1870), 1 R. & C. P. v. Met. Ry. Co. (1872), L. R. 8 Q. B. 161

Montreal,

**2284.** — It is a good defence to an action by indorsee against the acceptor of a bill of exchange, that it was accepted for the accommodation of the drawer, without consideration, & that it was indorsed over by the drawer after it had been paid by him at its maturity.—*PARR v. JEWELL* (1855), 10 C. B. 684; 139 E. R. 928, Ex. Ch.

*Annotations*—*Mentd. Ashurst v. Royal Bank of Australia*

given in renewal of the first, & agreed to accept a third draft in renewal of the second, but afterwards refused to do so at the instance of M., who, in the meantime, had become insolvent. Plff. furnished all the money used to retire the second draft with the exception of \$10 paid by M.—*Held*: deft. was not relieved from his liability on the second acceptance by the payment made by plff. & plff. was

entitled to judgment for the amount of the acceptance, less the \$10 paid by M.—*DILL v. WHEATLEY* (1861), 34 N. S. H. 523.—*CAN.*

## PART XIV. SECT. 2, SUB-SECT. 2.

**2285.** *Agent*—Authority to receive payment.—Note payable at agent's office.—A promissory note was, in the body of the document, made payable at the

of one R., a broker & agent. On the due date the holder presented the note at when it, on behalf of the

vested right of action in the holder against the acceptor of a bill of exchange can, in general, only be got rid of by a release or by an accord & satisfaction as between them; but, if the bill is an accommodation bill, & the holder has notice of that fact when he receives it, payment by the drawer is a complete discharge.—*COOK v. LISTER* (1863), 13 C. B. N. S. 548; 1 New Rep. 280; 32 L. J. C. P. 121; 7 L. T. 712; 9 Jur. N. S. 823; 11 W. R. 369; 148 E. R. 215.

*Annotations*—*Foll.* *Solomon v. Davis* (1883), Cab. & El. 83. *Consd.* *Hirachand Punamchand v. Temple*, [1911] 2 K. B. 330. *Mentd.* *Re Overend, Gurney, Ex p. Swan* (1868), L. R. 6 Eq. 344; *Re Fox, Walker, Ex p. Bishop* (1880), 15 Ch. D. 400; *Re Rowe, Ex p. Derenburg*, [1904] 2 K. B. 483.

**2286.** — In another action—Whether defence to action against acceptor.—In an action by indorsee against accommodation acceptor of a bill, it is not a good defence to the further maintenance that, after action brought, the drawer paid the amount of the bill & interest to the indorsee, under a judge's order in another action brought by indorsee against drawer.—*RANDALL v. MOON* (1852), 12 C. B. 261; 21 L. J. C. P. 226; 19 L. T. O. S. 92; 138 E. R. 90.

*Annotation*:—*Consd.* *Cook v. Lister* (1863), 13 C. B. N. S. 543.

**2287.** — Whether bill discharged.—The rule, that payment by the drawer of a bill of exchange to the holder does not discharge the holder's claim against the acceptor, does not apply where the bill has been accepted for the accommodation of the drawer.—*SOLOMON v. DAVIS*, 1 Cab. & El. 83.

## 2.—TO WHOM PAYMENT AND SATISFACTION MAY BE MADE.

See 1882 Act, s. 59 (1).

**2288.** Bill payable to one for use of another.—A bill was drawn directing the acceptor to pay T. P., or his order, £500 for the use of F. C., for value received of F. C.:—*Held*: payment should be made to T. P. or his order, & not to F. C.—*AMINGTON v. EVANS* (1690), 2 Vent. 307;

5.

B. C

*Annotations*—*Byd* (18 v. Bishop (1733), Kel. (1761), 2 Burr. 1216.

Chitty

on of ed., p. 278.

a note of hand, to an agent, of the debt, by plff's attorney, deft.

of one R., a broker & agent. On the due date the holder presented the note at when it, on behalf of the

*Surtalight*—*R. paid* amount of the note to d. at his o The payee had retained possession of the note, & though afterwards he demanded from



payment to the attorney himself is.—*YATES v. FRECKLETON* (1781), 2 Doug. K. B. 628; 90 E. R. 394.

—*Mentz. De Moranda v. Dunkin* (1790), 4 Term Rep. 119; *Hanley v. Caman* (1847), 11 Jur. 1088; *Robbins v. Fennell* (1847), 11 Q. B. 248.

—*See, generally, AGENCY, Vol. I.* 370, 581.

**2291. Person in possession of bill.**—In an action on 13 Anne, c. 15, in discounting a bill, it was proved that B. demanded payment of the acceptor, & commenced an action against him, & afterwards received the amount of the bill & the costs of those proceedings on producing the bill, & gave a receipt as attorney for present debt. —*Held*: this, without further evidence of B. being the agent of debt, & without production of the proceedings against the acceptor, was good *prima facie* evidence to be left to a jury of debt. having received the usurious interest.

We all know that the production of a bill of exchange is in general sufficient to warrant payment of the amount to the party who produces it (*MANSFIELD, C.J.*).—*OWEN v. BARROW* (1804), 1 Bos. & P. N. R. 101; 127 E. R.

**2292. Person entrusted for specific purpose**  
**Bill not delivered up for cancellation.**—P. sold goods to H., S., & P., partners in trade, & a bill of exchange for the amount payable to his own order, drawn by S. & P. upon H., which was not accepted. H., S., & P. dissolved partnership before the bill became due, & at the time of the

dissolution, had sufficient assets to pay all partnership debts. S. & P. then entered into a partnership with two other persons, & carried on trade at Newfoundland, where the old firm had an establishment & were there possessed of considerable property, which was sold to the new firm. F., the holder of the bill, delivered it to P. to procure payment of it out of the assets of the old firm at Newfoundland, & P. in the adjustment of partnership accounts with H. expressly debited the latter with the amount of the bill, as having been paid out of the funds of the old firm, but the bill, which was never cancelled, was returned again to F. who sued H., S., & P. upon it. S. & P., who had in the meantime become bkpts., suffered judgment by default. —*Held*: F. had not so dealt with his debt as to discharge H.'s liability.—*FEATHERSTONE v. HUNT* (1822), 1 B. & C. 118; 2 Dow. & Ry. K. B. 233; 1 L. J. O. S. K. B. 49; 107 E. R. 43.

**2293. Holder unable to produce & deliver up bill—Lost bill.**—The holder of a bill of exchange cannot by the custom of merchants insist upon payment by the acceptor, without producing & offering to deliver up the bill, & the indorsee of a bill having lost it, cannot, in an action at law, recover the amount from the acceptor, although the loss was after the bill became due, & the indorsee offered an indemnity.—*HANWARD v.*

(1827), 7 B. & C. 90; 9 Dow. & Ry. K. B. 1. L. J. O. S. K. B. 242; 108 E. R. 659.

(*Crowe* (1847), 1 Exch. Exch. 293. *Consd. Crow*

S., he never received the

fact that the note was payable at S.'s office did not constitute S. the

*A. C.* (1905), 2 S. AF. 11 C. T. R.

Defts. being sued on notes, given for the price of goods, then by O. the payee, plffs. indorsed by the payee, before & for valuable consideration, to plffs. payment to the payee, who they alleged, the agent of plffs. the amounts of the notes. Many persons had previously (O. money, & plffs. had received from O. from time to time as it had come into his hands, but it was not shown that defts. knew of this last so as to be led by it to to O. O. had not

him by liable.—

—CAN.

on his customer in Britain

various hands, & was

There the full the London bank

It had meantime but the

it

the bank, they had

money, refused to account for it to any one. On the merchant's draft

on

now already paid the full amount the bank. In an action

of it

ment to pursuer, or to any one authorized payment on his

of 1080; 37 Sc. Jur. SCOT.

—Note paid as a used of his

during coverture, & plff. to that the wife never had a from, or assent of, plff. after her marriage to receive payment. —*Held*: the plea did not disclose a good

I. L. T. IR.

of

promissory note in favour of R., & when it became due, paid the of it to the agent of R. It

R.

upon it. before maturity of the note, had notice of the transfer to plffs., though not writing, & before he paid, receive

(1812), 19 W. L. R. 519; 1

it

that he had sent when it was ivity; that o the & sent the

of the in

In plff.'s it & it was actually paid, not withdrawn. The indorser *Held*: payment to indorser was no answer. —*BANQUK PRUD'LE v. VIAU* (1860), 4 L. N. 123. —CAN.

Plff. handed P. a order by debt. payable to him without indorsement, he had plff.'s authority T. satisfactory to with debt. p. it. the In by plff. against was entitled to recover on

7 Terr. L. R.

2294 *iv.* —*Forged* K. purchased from deft.'s M. a bill drawn on his bank at R. payable on demand to plff.'s order in B. & sent the bill by to plff. During its was stolen. It was presented by

in blank of plff., Plff., as soon as he heard of made u ry of that the bill had been wa the it to be of

& was On

& d

whic

filed this suit

drawer

ment to the de presented it for p AN New ORIENTAL I. L. R. 15 Bom. 267.

# 346 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Sect. 2.—By and satisfaction: Sub-sects.

Clay (1854), 9 Exch. 604. *Apud*, King v. 2 (1871), L. R. 6 C. P. 466. *Consd.* Charles v. (1877), 2 C. P. D. 151. *Reid*, Macartney v. Graham 2 Sim. 265; Davis v. Tunnicliff (1838), 7 L. J. C. P. Wain v. Bailey (1839), 2 Per. & Dav. 507; Blauche (1845), 14 M. & W. 154; Price v. Price (1847), 16 M. & W. 232; Wright v. Maldstone (1855), 1 K. & J. 701; Thairwall v. G. N. Ry. Co., [1910] 2 K. B. 52 Act, s. 52 (4).

—The payee of a negotiable bill of e, having lost it, cannot, without it, maintain an action for the recovery of its amount against the acceptor upon its arriving at maturity. —RAMUZ v. CROWE (1847), 1 Exch. 167; 10 L. J. Ex. 280; 11 Jur. 715; 151 E. R. 70. *Reid*, Crowe v. Clay (1851), 9 Exch. 604; *Idem* v. Gorton (1857), 1 C. B. N. S. 576; Thairwall v. S. Ry. Co., [1910] 2 K. B. 509. bills generally, see Part XVI.,

**2295. Non-negotiable note.**—The of a note not negotiable cannot refuse to pay the when due, on the ground that the payee not got it in his possession or power, & cannot lue it for the purpose of delivering it up to the maker on payment. —WAIN v. BAILEY (1839), 10 Ad. & El. 610; 2 Per. & Dav. 507; 113 E. R. 231.

*Annotations*: *Distd.* Ramuz v. Crowe (1847), 1 Exch. 167; *Spindler* v. Grollett (1847), 1 Exch. 384. *Reid*, Price v. Price (1847), 16 M. & W. 232; Clay v. Crowe (1853), 8 Exch. 295; Thairwall v. G. N. Ry. Co., [1910] 2 K. B.

o, Nos. 2380, 2381,

3. —AT WHAT TIME PAYMENT AND SATISFACTION MAY BE MADE.

See 1882 Act, s. 11.

As regards instruments payable by instalments.] —See Part II., Sect. 1, sub-sect. 4,

Computation of time of payment.]—See Part V.,

When cause of action arises, Part XXII.,

**2296. On day of maturity.**—By the custom of merchants in London, the payer of a bill has the whole day on which it becomes due, till 5 o'clock, to discharge it in.—COLKETT v. FREEMAN (1787), 2 Term Rep. 59; 100 E. R. 33.

—*Mentd.* Gillingham v. Laing (1816), 6 Taunt. Richardson v. Pratt (1885), 52 L. T. 614.

—Where a bill of exchange is drawn payable at a certain future period, for the amount of a sum of money lent by the payee to the drawer at the time of drawing the bill, the payee may recover the money in an action for money lent although six years have elapsed since the time when the loan was advanced, Stat. Limitations beginning to operate only from the time when the money was to be repaid, i.e., when the bill became due.—WITTERSHEIM v. CARLISLE (LADY) (1791), 1 Hy. Bl. 631; 126 E. R. 360.

—*Folld.* Irving v. Vetch (1837), 3 M. & W. 90.

**2298.** —Where by mistake payment of a bill had been demanded from the acceptor the day before it became due, in an action against the drawer:—*Held*: plff. should be non-suited, the demand being premature.—WIFFEN v. ROBERTS (1795), 1 Esp. 261, N. P.

—*Reid*, Rouquette v. Overmann (1875), L. R. 10 Q. B. 525; Kennedy v. Thomas (1894), 42 W. R. 611.

**2299.** —It is too early to issue a writ on the day on which a bill of exchange is due; it is sufficient in such case to plead that the bill was not due at the time of commencing the suit.—WELLS v. GILES (1836), 2 Gale, 209.

*Annotation*:—*Apprvd.* Kennedy v. Thomas, [1894] 2 Q. B.

**2300.** —Where an action on a bill of exchange was commenced on June 11, & the bill only arrived at maturity on that day:—*Held*: plff. failed to sustain his declaration that the bill was "now overdue," & his right to recover was properly put in issue by non *acceptavit*.—HINTON v. DUFF (1862), 11 C. B. N. S. 724; 31 L. J. C. P. 199; 5 L. T. 707; 10 W. R. 295; 142 E. R.

**2301. On last day of grace.**—*Qu.*: whether the acceptor of an inland bill is bound to pay it on demand at any reasonable time of the third day of grace, or whether he is allowed the whole

**2301 II.** —An action on promissory note instituted on of the third day of grace is not ture.—ONTARIO BANK v. FOSTER

**2301 III.** —promissory to run until after last expiration of the not LOCHTE MARIE v. (1882), 5 L. N. 372.—CAN.

the writ to have been issued on 10 on a note made on Mar. 9 months after date:—*Held*: ration was bad.—HILL v. LOTT (1855), 13 U. C. R. 463.—CAN.

**2301 v.** —The holder of a promissory note, payable on a certain process for its recovery of grace, after refusal

## PART XIV, SECT. 2, SUB-SECT. 3.

**2306 I.** At maturity.]—The maturity of a note during the pendency of an action prematurely brought upon it, is no answer to the exception of deft. that such note was not payable at the of the institution of the action. v. PERRON Q. R. I.—CAN.

II. — Notes —For future

the transferred by the part the payee, can collect the notes at maturity before the liability arises, to pay them. v. TISON (1869), 19 C. P. CAN.

**2301 I.** On indorse of a having taken it there on the last

the 16 U. C. R.

m. of C. L. P. Act promissory note in E. L. an by creditor of a v. 11 B. C. R. After it authority except amount for plff. it if he had had authority in fact arrived at back the note of a sum which he had

or to it s. WAINWRIGHT





# 348 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

2.—By payment and  
3 & 4.]

2311. — Composition received by drawer from acceptor—Duty of drawer to indemnify acceptor against holder.]—Pltf. owed deft. £50 upon a bill of exchange drawn by the latter upon & accepted by the former. Before the bill arrived at maturity pltf. called a meeting of his creditors, which was attended by B. on the part of deft. At that meeting it was agreed that the several creditors of pltf. should receive a composition on the amount of their respective debts, & a deed of composition & release was prepared, & executed (*inter alia*) by B. on behalf of deft., & the amount of the composition was afterwards paid to deft. The holder of pltf.'s acceptance afterwards sued pltf. thereon, & compelled him to pay the amount, with 26 13s. for interest, & £2 10s. for costs:—*Held*: pltf. was entitled to recover from deft. the amount of the bill & interest.—*HAWLEY v. BEVERLEY* (1843), 6 Man. & G. 221; 6 Scott, N. R. 837; 1 L. T. O. S. 256; 131 E. R. 873.

*Didd*, *Davey v. Baines* (1892), 9 T. L. R. 29.

2312. After action brought—Right to proceed for costs.]—A plea, against the further maintenance of the action, that since the commencement of the action to recover a sum of money, on a bill of exchange, deft. had paid, & pltf. had received, same in satisfaction of deft.'s promise, & of all damages, without the like allegation as to costs also:—*Held*: good after verdict.—*CORRETT* (1838), 8 Ad. & El. 673; 3 Nev. & P. K. B. 551; 1 Will. Woll. & H. 511; 7 L. J. Q. B. R. 993.

*Reid*, *Gell v. Burgess* (1840), 18 L. J. C. P. L. 5 Jur.

Payment accepted but costs refused.]—To an action of *assumpsit* on a cheque for £25, deft. pleaded payment & acceptance of same, after action brought, in satisfaction of the issue, damages, & costs, & issue being thereon, he proved payment & acceptance of £25, & that pltf., after being paid, & declined a sum offered for costs, & said he would pay them himself: *Held*: such proof supported the issue on deft.'s part, & was a good defence, for pltf., after payment of £25, could not have proceeded in the action for damages, they being merely nominal, & could not have proceeded for costs, having no ground of action for damages.—*THAME v. BOAST* (1848), 12 Q. B. 808; 17 L. J. Q. B. 339; 12 Jur. 1024; 116 E. R. 1073.

12 L.

L. T.

2314. — The of a bill exchange is entitled to in an action against the acceptor, for the recovery of costs, though, pending the action, payment in full satisfaction of the amount of the bill with

XIV. SECT. 2, SUB-SECT. 4.

Reimbursement of

of a  
note  
made

pltf. made when he dis

NOT (1914), 25 W. L. R.

debtor upon a note can  
it by simply refunding the  
amount has disbursed

& HAMILTON good

R. 41 & C.

to deliver up—For

on a purchase of land the  
forwards agreed to  
to him on a good  
by deed to  
the

notes themselves being in the  
possession of a third party; deft. afterwards

& all money due thereon, be made by another party to the bill & accepted by pltf.

Where to a declaration against the acceptor of a bill of exchange for £49 16s. indorsed by T. to pltf., deft. pleaded *non accepit*, & that, after the pleading the first plea, T. had paid to pltf., then being the holder of the bill, & pltf. had accepted, £60, being the full amount of the bill, & all interest due thereon, in full satisfaction & discharge of the bill, & of all money due & payable on account & in respect thereof:—*Held*: the plea was no bar to the further continuance of the action.—*GOODWIN v. CREMER* (1852), 18 Q. B. 757; 22 L. J. Q. B. 30; 17 Jur. 2; 118 E. R. 286.

*Annotations*:—*Appl.* *Kemp v. Balls* (1864), 10 Exch. 607. *Mentd.* *Ash v. Pouppeville* (1867), 8 B. & S. 825; *Tetley v. Wanless* (1867), L. R. 2 Exch. 275.

2315. — —.]—*RANDALL v. MOON*, No. 2286,

2316. — — Against drawer—Payment by acceptor.]—Pltfs. sued the acceptor & drawer of a bill of exchange concurrently. The acceptor paid, & without any demand for the cost of writ, pltfs. served the drawer with declaration. The drawer pleaded payment before action, & the judge at the trial, considering pltfs.' conduct improper, entered a nominal verdict, & refused to certify:—*Held*: pltfs. had a right to go on until payment of costs by the drawer, & the judge had no power to enter a nominal verdict upon the plea.—*LONDON & SUBURBAN BANK v. WALKINSHAW* (1871), 25 L. T. 704.

2317. — Right of defendant to compel plaintiff to proceed—Or pay his costs.]—Proceedings were commenced on a bill of exchange against the drawer, & also against deft. as acceptor. The former paid the bill & costs, & it was delivered up to him, & notice was given to deft. that proceedings against him were abandoned, his costs were not paid, & as he disputed his liability as acceptor, he ruled pltf. to declare, who then applied to a judge to stay proceedings, & obtained an order for that purpose:—*Held*: the order should be set aside.—*LEWIS v. DALRYMPLE* (1835), 3 Dowl.

## 4.—WHAT AMOUNTS TO PAYMENT

2318. Settlement between maker & payee—Discharge of drawer against depositor for special purpose.]—A note payable on demand with interest, drawn by A. in favour of B. as security for a debt, was by B. indorsed to C., a bkpt., for the same purpose. After the indorsement it passed backwards & forwards between B. & C. several times, & previous to its being ultimately deposited with C. he received an intimation from B. not to negotiate it, as he should want it when he settled accounts with A.:—*Held*: C. could not, after a settlement of accounts between A. &

him: he  
on the

he

the



## PART XIV.—DISCHARGE.

B., without a redelivery of the note, recover on it against A.—**ROBERTS v. EDEN** (1799), 1 Bos. & P. 398; 126 E. R. 974.

*Notes:—* **Mentd.** Muttilloll Seal v. Dent. Ad. Kl.  
328; Glass v. Balls (1889), 59 L. J. Q. B. Ind.

**2319. Securities lodged as collateral—Not until money received.]—**If policies of assurance are lodged with the payee of a bill of exchange as collateral security, they do not operate as satisfaction until the money is actually received upon them, although upon a submission to arbitration a certain sum may have been awarded to be due upon them.—**SCOTT v. LITTON** (1808), 1 Camp. 246, N. P.; *subsequent proceedings*, 9 East, 347.

*Notes:—* **Mentd.** Hilton v. Fairclough (1811), 2 Camp. Gladwell v. Turner (1870), 39 L. J. Ex. 31; 1 Chy. (1807) P.

**2320. — Pleading—Must allege satisfaction or payment.]—**To *assumpsit* against acceptor of a bill of exchange, a plea that deft. had, before the bill became due, delivered to the drawer certain shares, as a collateral security for the amount of the bill, in order that he, the drawer, might, by the sale thereof, repay himself the amount of the bill, & that, after the bill became due & unpaid, the drawer sold the shares for a large sum of money, to wit, £2,000, which he then appropriated to the payment of the bill & damages:—*Held*: 1. as not showing that the drawer received the in satisfaction of the bill, or that the bill in fact, paid by the sale of the shares.—**CANNAN v. REID** (1841), Drinkwater, 240; 10 L.

recover against deft. no fraud been shown:—*Held*: deft. was not liable.—**SMALL v. BENNETT** (1841), 1 Ont. Dig. 747.—**CAN.**

d. Agreement to sell land.—Agreement not in writing.]—To an action by the deft. p. It became due that deft. should sell to it was in full satisfaction of all of deft. against deft., & pttf. ed such agreement in full of the as not to in the ing U. C. R. **CAN.**

of in the transfer of the ship: in order to carry out this contract, D. obtained outstanding notes of deft. by giving his own notes in place of them; he transferred deft.'s notes to pttf. overdue. The vessel was never transferred & the time of payment under the contract did not arrive. It was contended that as soon as D. procured these notes with the intention of using them in payment for the vessel, deft.'s liability was at end:—*Held*: deft. was legally liable on the notes.—**RAYMOND v. WILSON** (1850), 3 All. 2.—**CAN.**

g. Trader to holder at maturity—induced by payment into court in action brought by son of holder at maturity.]—Deft. gave a promissory note, which was indorsed in blank by the payee; after it was due it was in the hands of .. who demanded payment of deft., but refused to produce it, & a few forwards told deft.'s agent, who

to pay the note, that they should not have it, & he would give them a hunt for it. Deft. afterwards tendered the amount of the note, when J. said he had sold it, but refused to tell who the holder was, saying deft. might it. On the following day the

hands the amount of the note & costs. Pttf. was J.'s son, living there was no transfer of the note by J.:—It might be inferred that pttf. only the agent of J., & the jury

All. 107.—**CAN.**

a as security for their payment, & under a power of sale therein had sold to third parties for the amount of the notes.—**HANK OF HARTMAN NORTH AMERICA v. JONES** (1851), 5 U. C. R. 86.—**CAN.**

**2321 D. —.**—Deft. co. were sued on two promissory notes for goods sold & delivered & work & labour done, which were renewed from time to time. The notes were signed by one M. president of deft. co. & co-secretary-treasurer, in accordance with the bye-laws of the co. M. had given one consolidated note of his own in respect of the same debt, & on his death, pttf. sought to make his estate liable on it:—*Held*: proof against M.'s estate was no bar to an action against deft. co. the principal debtors.—**HALDWIN LION STRUT WORKS, LTD. v. DOMINION CANADIAN CO.** (1903), 3 O. W. R. 4, 179.—**CAN.**

h. Rents of defendant's property—Receivable by plaintiff—Proof of actual

received & with B. in one mercantile house, with C. in another, the house of A. & B. indorse a bill of exchange to the house of A. & C., which B., acting for the house of A. & B., received securities to a large amount from the drawer of the bill, upon an agreement by B., that the bill should be taken up & liquidated by B.'s house, & if not paid by the acceptors when due, should be returned to the drawer:—*Held*: the securities being paid & the money received by B. in satisfaction of the bill, A. was bound by such act of his partner, B., whether in fact known to him or not at the time, not only in respect of his partnership interest in the house of A. & B., but also individually in other respects, & he could not in conjunction with C., his partner in the other house, an action as indorsees & holders of the bill

through the medium of & by agreement with B. in discharge of same.—**JACAUD v. FRENCH** (1810), 12 East, 317; 104 E. R. 124.

*Annotations:—* **Mentd.** Stannard v. Milthorne (1834), 10 Bing. 491; Powles v. Page (1846), 3 C. R. 18.

**2322. Current accounts at bank.]—****MARSH v. HORTON** (1818), Chitty on Bills of 11th ed., p. 290.

**2323. —.**—Deft. accepted a bill of drawn by C., who indorsed it to his bankers, & used it on the credit side of C.'s account, bill having been dishonoured, entered it on the debit side. A few days the dishonour, deft. paid to C. the amount of

on a promissory note that pttf. of

d an opportunity of in it

r. TRAVIS (1870), 2 Han. 14.

**CAN.**

to a- of

a bill of exchange issued tion drawer for, a trader, was induced to present his bankers, a memo. for securing all debts due or to become due from him to them:—*Held*: 1. in the

of

OF R. R. 21.—**IR.**

**2323 I. (Current accounts at bank.)—**Deft. were the bankers of both pttf. & E., who had given a note to pttf. at deft.'s bank; pttf. two weeks before its maturity, left the note with deft. for collection, & to be protested if not paid. On the day of its maturity, the keeper debited E.'s account & cred pttf.'s with the amount of the note, on pttf. calling at the bank morning, he received his pass book with an entry crediting him with the of the note:—*Held*: the act of ledger keeper in charging it account & crediting it to pttf. account & pass-book, amount payment of the note, & vouchable.—**NIGHTINGALE v. CITY OF MONTREAL** (1876), 25 C. P. 74. **CAN.**

**2323 II. —.**—In an action y the indorsees of a note, against the

**2.—By payment and satisfaction: Sub-sect. 4.]**

but omitted to take it out of the bankers' hands. C. subsequently paid in to the bankers on his general account more than enough to cover all the items of the account preceding the bill item, & that item also, & the bankers, for a space of three years, treated the bill as paid, but they then sued debt. on his acceptance:—*Held*: he was not liable.—*FIELD v. CARR* (1828), 5 Bing. 13; 2 Moo. & P. 46; 6 L. J. O. S. C. P. 203; 130 E. R. 964.

*Consid. Jones v. Broadhurst* (1850), 9 C. B. 173. *Reid. Cory v. Mecca (Owners)*, (1897) A. C. 266. *Mentid. Pease v. Hirst* (1829), 8 L. J. O. S. K. B. 94; *Tharsis Sulphur & Copper Co. v. Loftus* (1872), 21 W. R. 109.

**2324. Composition—Payment of part—Gift of residue.**—A., an agent, held funds belonging to B., his principal, but had accepted bills drawn by B. to the full amount of them. B. paid away the bills to his creditors, who, to relieve A. from liability, & without the knowledge of B., accepted from A. a composition of 10s. in the pound, & gave him up the bills, A. then holding funds

It was proved by C., the maker, that the note was made an item in the current account between A. & C. (the maker); that it was long before charged to the maker as a debt due by him; & that when it was so charged the balance was in the maker's favour:—*Held*: the note must be taken to be by the maker, & it

by A. sum.

the was charged the balance was in his favour. *McGILLIVRAY v.* (1848), 4 U. C. R. 342.—CAN.

**2323 iii.** — The amount of a note by a bank for the indorser on maturity to the in-

by books of the bank, were more than to cover his indebted- at the time the note *Held*: the note must be to have been paid; the fact that

to the bank continued to affect the question of payment of in absence of a reserve of

*EXCHANGER BANK OF* (1887), 11 L. R. 3 Q. B. 30; 31 C. J.

A note for in

the While the was in the hands bank, the co. ordered the bank to pay out of its account. The bank did not do so, & it was renewed at maturity each time by the co. In view of this, & notwithstanding the renewals in- duced for accommodation, the note must be considered as having been paid, & the indorser discharged.—*FRIDMAN v. SCOTT* (1914), Q. R. 14 K. B. 31.—CAN.

**h. Current account with law- agent.**—H. & B. granted to L., the law agent of H., a promissory note for £100. L., on receiving the note, entered it to the credit of H. in an account-current kept in his name, & against him, in which a variety of cash & bill transactions between H. & L. were in use to be entered. The note was discounted, but on falling due,

not being paid by H., L. retired it, & debited H. with the amount in the

Thereafter there were on both sides of the Those on the credit of payments made by insufficient to turn

H. to L. in the account-current in favour of H., or even to reduce the balance against him below £100, were sufficient to extinguish the balance (including the amount of the note) due by H. to L. at the date when the note debited:—*Held*: the note was

by the by H. & placed to his credit in account-current.—*LANG v. BROWN* (1871), 113; 32 Sc. Jur. Dnbl. (Cl. of Sess.) 113; 32 Sc. Jur. SCOT.

In an action by the drawer of a bill of exchange debt, that by a deed under English Act, 1861, all the property of the acceptor was conveyed upon trust to distribute among his creditors, & were to be at liberty to At the date of the deed bill was still current. Plff. had nothing on the bill:—*Held*: he —*HIBBERT v. TUNNINGHAM*, 1 L. T. Jo. 442.—IR.

**2324 i. Composition.**—In an action to to be due on by in favour of was that applia. concurred with the other tors of resp. in a certain distribution of the latter's property by way of com- position & discharge & had obtained the

having receive of them could not now repu- them on the ground that they not fully understood without at a surrender of the advantages that had been derived through them. *ONE & Co. v.* 26 S. C. R. 372.—CAN.

**2324 ii.** — To an action on a promissory note debt, pleaded a deed of composition & discharge, under Insolvent Act, 1849, executed by a majority of creditors; that plff.'s claim was duly proved, & that a majority in number of creditors con- sented in writing to a discharge, which was duly confirmed. Plff. replied, acknowledging the receipt from ac-

belonging to B. to the full amount of the bills. B. afterwards became bkpt., & his assignees brought *assumpsit* for money had & received against A. for the difference between the amount of the bills & the composition:—*Held*: as B. had been benefited to the full amount of the bills, the payment of the composition was, as between him & A., a full payment of the bills, & the action was not maintainable.—*STONEHOUSE v. READ* (1825), 3 B. & C. 669; 5 Dow. & Ry. K. B. 603; 107 E. R. 881.

— From principal debtor—Release of surety.] —See Sect. 12, sub-sect. 3, post.

**2325. Bill to secure fluctuating balance—Balance at one time exceeding amount.**—A. gave his bankers, as security for advances, a note, by which he & B. jointly & severally promised to pay on demand to the bankers or order £300, with interest. The bankers credited A. with the amount of the note, & debited him yearly with interest. Upon a change in the firm of the bankers, the note undorsed was, with A.'s

signee of debt.'s estate of certain pro- missory notes, indorsed, for certain amounts, & payable at certain & accepting same in payment, stating that the creditors therein named (of whom plff. was not one) accordingly discharged him, & autho- rised the restoration of the estate to him:—*Held*: the deed of composition as set out was insufficient.—*SHAW v.* (1871), 21 C. P. 266.—CAN.

**2324 iii.** — Note accepted by trustees as such—Holder accepting composition from beneficiary.—The trustees of deceased having borrowed £500 from G. along with T. C., C.'s heir, for whose behoof they held the estate, accepted a bill for the amount addressed to him & to them, "conjunctly & severally, as a quorum of the trustees," & bearing, as value, "money borrowed for the use & behoof of the representa- tives of the deceased C." The trustees gave up the estate to T. C., without paying this debt; & he, having become insolvent, executed a trust-deed for behoof of his creditors. G. by his attorney signed the deed & received a dividend. He then raised an action against the trustees alleging that they were personally liable:—*Held*: in respect of pursuer's concurrence in, & accession to, the deed of trust for the creditors of T. C., the action failed.—*GIBSON v. M'DONALD* (1824), 3 Sh. (Cl. of Sess.) 374.—SCOT.

*Between holder & in- dorser—Maker not released.*—*BANQUE NATIONAL v. BETHOURNAY* (1887), 18 R. L. O. S. 175.—CAN.

**2324 v.** — Admissibility of evidence.] —To an action on certain notes & bills of exchange, & on the common counts, against debt. as jointly liable with one H., debt. pleaded satisfaction & dis- charge of plff.'s claim before action, by executing with H. an assignment of their joint effects to plff. & another for the benefit of creditors, & that plff. accepted this in full satisfaction & discharge of the cause of action in question. At the trial parol money was admitted of the agreement to accept the assignment fac- tion & discharge:—*Held* been properly received.—*WHITNEY v. WALL* (1867), 17 C.

**m. Settlement of accounts—Bond given for balance—Proof of satisfaction.]** —Declaration on three notes given by testator in his lifetime. Plff. that





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payment, & if the former, it was a defence to the action, although debt. did not prove the latter allegation of the plea, but if the latter, it was no defence, unless he proved that both the bills were outstanding at the commencement of the action. —*GOLDSHEDE v. CORTHELL* (1836), 2 M. & W. 20; 6 L. J. Ex. 26; 150 E. R. 651.

, Sect. 11,

**2329. Bill to secure purchase-money—Receipt of purchase-money.**—To an action against acceptors of a bill of exchange for £419 2s., damages being laid at £500, debts. pleaded as to £1 18s. parcel, etc., payment of £5 into ct., & "as to the residue of the sum mentioned in the declaration," that plffs. were the brokers of H. & sold certain property for him for £415 12s. 6d., payable on a day which would arrive before the bill would become due, & that he applied to plffs. to advance him the amount which they agreed to do, if H. would procure debts. to accept a bill for £419 2s., & that plffs. agreed to appropriate the purchase-money when received by them towards payment of the bill, & that thereupon, debts. for the accommodation of H. & without any consideration accepted the bill, & plffs. advanced H. £415 12s. 6d. & afterwards & before the bill became due they received the purchase-money, viz., the £415 12s. 6d. which was sufficient to satisfy the residue of the sum in the declaration mentioned, & all damages, etc.: *Held*: (1) the facts stated in the plea being proved were a good answer to the action; (2) they were evidence of a payment to plffs. by debts. through the agency of H. of £415 12s. 6d.; (3) debts. were as between plffs. & themselves entitled to credit for the full sum of £415 12s. 6d. without

reference to a claim which plffs. had on H. for £3 15s. which was admitted to be due by him to them, by virtue of an agreement respecting the mode of paying the brokerage; (4) the pleas, though informally pleaded to the sum mentioned in the declaration, yet must be taken after verdict to apply to the sum mentioned in the bill.—*HILLS v. MESNARD*, (1847), 10 Q. B. 266; 16 L. J. Q. B. 306; 11 Jur. 796; 116 E. R. 103.

**2330. Allowance of cross demands in account stated.**—*Assumpsit* by drawer against acceptor of bills of exchange amounting to £912. Plea, that after the accruing of the causes of action, an account was stated between plff. & debt. of & concerning the causes of action, & certain other demands of plff. against debt., & certain other demands of debt. against plff., & that £50 & no more was found to be & was then due from debt. to plff., which sum debt. paid to plff. in satisfaction of the sum so due:—*Held*: a good answer & well pleaded, for the plea in effect set up the allowances in account by way of partial payment & an actual payment of the residue.—*CALLANDER v. HOWARD* (1850), 10 C. B. 290; 1 L. M. & P. 502; 19 L. J. C. P. 312; 15 L. T. O. S. 391; 14 Jur. 672; 138 E. R. 117.

*Annotations*:—*Mentd. Perry v. Attwood* (1856), 6 E. & B. 691; *Re Bayley*—*Worthington & Cohen's Contract*, [1909] 1 Ch. 648.

**2331. Note for joint & several note—Second note paid.**—A. & B. gave their joint & several promissory note to C., who afterwards, by arrangement with A. received in satisfaction of that note another of the like amount from D., which was ultimately paid by E.:—*Held*: those facts sustained a plea of payment by B., in an action

thereof by  
of H.'s note for £1,000:—*Held*:  
was liable. —*BORTH v.*  
19, 8 C. P. 464.—CAN.

There are no immediate funds,  
is nevertheless paid, & upon  
deposits being made, the

*CHETTY v.* Q. R. 49 S. C.  
428. —CAN.

to secure  
mortgaged  
property. —  
sum plff.  
back a mtge. on it to secure the  
& agreed that if  
in the payment he  
he property, plff.  
sell it to pay himself, give  
L. &

sted on if the property were given up:  
ing been made the property  
up & sold by plff. for  
than mtge. money, & plff. sued on one  
of the notes to recover the difference:  
—*Held*: the notes were satisfied by  
the surrender of the property.—*GARRIN*  
*v. JUNEUX* (1835) 4 O. S. 134.—CAN.

**2339 II.** —Collateral security given  
in addition—Collateral security dis-  
charged before maturity of notes.—A  
part owner of a farm joined in pro-  
missory notes as surety for the pur-  
chaser of a machine, & also gave a lien  
on his share of the land as further  
security. Subsequently his interest  
passed to his co-owner, of whom plffs.  
were execution creditors under judg-  
ments subsequent to the lien. Debts.,  
being mtgees. of the whole farm prior

to the lien, afterwards sold under their  
sale, & out of the proceeds  
the lien, & the notes were  
in 1891 by them to an execu-  
tion creditor subsequent to plffs., who  
held them until 1898, & then sued on  
the notes without result, as the maker  
became insolvent. If the maker  
ied in 1895, by which time  
the had become payable, the  
amount of them would have been  
the notes were  
not by the application of the  
of the sale in discharge of not

& SAVING CO.  
CAN.

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collateral security  
was be  
for a chattel mtge.  
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it. He  
*Held*  
new to which was upon  
lateral.—*RYANS v. PERKINSON*  
17 O. W. N. 9.—CAN.

of plff., debt by  
the

E. favour of plff., which  
ed as covenantor with &  
for E.: that the mtge. was  
without as a security by  
of a foreclosure upon a

to keep alive & preserve the security  
for the benefit of debt.: that plff. gave  
no notice of the foreclosure proceedings  
to debt.: & that, by reason of such  
failure & neglect, debt. was discharged  
all liability to plff.:—*Held*: the  
a reasonable ground  
of defence.—*DOUGLAS v. YOUNG* (1912),  
22 W. L. R. 733; 3 W. W. R. 523;  
8 D. L. R. 788.—CAN.

pri-

mary  
into.)—Where securities to which a  
is collateral are in the payee's control as  
factors for the principal debtor they  
are bound by the principal's instruc-  
tions with regard to the sale, given  
before default & accepted without  
demur, & any loss incurred by non-  
compliance with those instructions  
pro tanto discharges the acceptor.—  
*NEILL & CO., LTD. v. KETNER* (1894),  
N. Z. L. R.

of  
joint makers.)—A promissory note  
\$4,000 was given by debts. & A.  
& B. & hypothecated to plffs. as  
collateral security for the N. Co.  
The N. Co. on their insolvency owed  
plffs. \$3,000. Upon demand upon  
debts. as makers A. & B. deposited

ROYAL BANK OF CANADA v.  
(1918), 14 O. W. N.  
CAN.

a Note as for  
ance of agree-  
plffs.)—R. a  
from debts. L. & D., by agreement be-  
tween him & them as security until  
L. should give him a mtge.  
lands. L. executed  
it to R. who said he would give  
the note on M. bringing him a certificate



against him by C. on the first note.—*THOMAS v. SMITH* (1851), 10 C. B. 659; 2 L. M. & P. 48; J. C. P. 71; 16 L. T. O. 8. 365; 15 Jur. 138 E. R. 261.

—*Dodd, Parker v. Watson* (1853), 8 Exch. Nash v. De Freville, [1906] 1 Q. B. 72.

Discharge of parties to joint & several notes & acceptances generally, see Sect. 9, post.

Discharge by renewal of bill or by giving fresh bill, see Sect. 11, post.

**2332. Part payment & bill for balance—Refusal to accept bill & to return money.**—Deft. being indebted to pltf. on a bill of exchange for £25, & being unable to pay the full amount left £9 10s. in cash, & a bill for £17 in renewal of the balance at pltf.'s house in discharge of the debt. A few days afterwards he met pltf., who then refused to take the bill in renewal, & stated that he should retain the cash as payment of another debt, which he said was due. Deft. then demanded back the money in addition to the bill, but pltf. refused to return it. Pltf. shortly afterwards sued deft. on the original bill:—*Held*: (1) (*POLLACK, J.B. & PLATT, B.*) in the circumstances, the cash & retainer of the money by pltf. was evidence of payment; (2) (*PARKE, B., & MARTIN, B.*) it did not amount to a payment, but to a set-off. —*THOMAS v. CROSS* (1852), 7 Exch. 724; 21 L. J. C. P. 100; 30 L. J. C. P. 40; 15 C. L. R. 600; 135 E. R. 1565.

*Ann. Nom. Re Bowdell, Merritt v. Bowdell, 359.*

**3. Note to secure periodical payments.**—*Whether periodical payments payment of* —By the rules of a money loan society it is provided that each holder of shares should at each member should take his share by or for want of a purchaser by ballot, that for share he was to receive £40 when paid by the members, upon giving a security, to be approved of by the committee. A. purchased a £40 share, & by way of the security required, he gave, with two parties, one of whom was deft., a joint promissory note payable on demand, for £40, to the treasurer of the society. He continued the weekly payments regularly for some time, & others were made by his sureties, & then default was made. In an action upon the note, in default of payment of the weekly sums:—*Held*: the preceding payments of the weekly sums were no evidence in

of registration. Three weeks later & a fortnight after H.'s death M. registered the mtge. No intermediate intervention, however, intervened. I. obtained the but did not bring it to H.'s administrators:—*Held*: I. had substantially fulfilled the agreement. —*McKENNIE v. McLEAN* (1866), 2 Q.B. 321.—CAN.

**y. Note pledged in consideration of advances—& to secure general indebtedness—Right of pledgee after advances paid off.**—In consideration of debt, bank making fresh advances to a co. of which pltf. were directors a note of the co. payable to pltf. & specially indorsed by them to the bank, was pledged to the bank as collateral security to the indebtedness of the co. generally; the fresh advances were subsequently paid off:—*Held*: the bank was entitled to hold the note. —(*COX v. CANADIAN BANK OF COMMERCIAL*) (1911), 21 Man. L. R. 1; 46 S. C. R. 344.—CAN.

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support of a plea of part

*JONES v. GRETTON* (182 L. J. Ex. 247; 21 L. T. O. 8. 167; 17 J. P. 478; 1 C. L. R. 600; 135 E. R. 1565.

v. Meek

note, given to secure a loan to a member of a money club formed for the purpose of raising money by means of monthly subscriptions, & lending it in small sums at interest to the dividing the proceeds when the shares fully paid up & the loans repaid, cannot rely upon the monthly subscriptions & premiums paid by his principal, as payments in reduction of his liability upon the note.—*WRIGHT v. HICKLING* 2 C. P. 100; 30 L. J. C. P. 40; 15

**2335. Retirement—By acceptor.**—The word "in reference to a bill of exchange, is of

is applied to various circumstances: if retires the bill at maturity, he takes it from circulation, & it is in effect paid. —*C. DENNY* (1854), 15 C. B. 87; 23 L. J. C. P. 100; 18 Jur. 981; 2 W. R. 554; 130 E. R. 351 nom. *ELSON v. DENNY*, 2 C. L. R. 600.

**2336 By word "of exchange,"** of various meanings, according as it is applied to circumstances: if an indorser retires it, merely withdraws it from circulation in so far as he himself is concerned, & may hold it with the same remedies as he would have had, if he had been called upon in due course, & had paid the amount to his immediate indorsee: & this is the ordinary meaning of the word "retire." —*ELSON v. DENNY* (1854), 15 C. B. 87; 23 L. J. C. P. 100; 18 Jur. 981; 2 W. R. 554; 130 E. R. 351; sub nom. *ELSON v. DENNY*, 2 C. L. R. 600.

**2337. Abstaining from applying funds in of note.**—To an action on a joint & several promissory note of deft. & S., payable to pltf. at 6 months after date, deft. pleaded payment:—proof that pltf. had funds to the credit of principal debtor shortly after the note became due, & had abstained from applying those funds in discharge of the note, or from communicating to deft. for three years the fact that the note remained unpaid, did not sustain the plea of

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# 354 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

**Sect. 2.—By payment and satisfaction:**  
4 & 5.]

payment.—**STRONG v. FOSTER** (1855), 17 C. B. 201; 25 L. J. C. P. 106; 4 W. R. 151; 139 E. R. 1047.

*actions*:—**Mentd.** **Pooley v. Harradine** (1857), 7 E. & B. 431; **Wright v. Sanders** (1857), 29 L. T. O. S. 175; **Frazer v. Jordan** (1858), 8 E. & B. 303; **Mutual Loan Fund Assocn. v. Sudlow** (1858), 5 C. B. N. S. 449; **Greenough v. McClelland** (1860), 6 Jur. N. S. 772; **Bailey v. Edwards** (1864), 4 B. & S. 761; **Ewin v. Lancaster** (1865), 6 B. & S. 671; **York City & County Banking Co. v. Bainbridge** (1880), 43 L. T.

**2338. "Banker's payment" — Returned.**  
Pltfs., holders for value of a bill of exchange accepted by one of defts., received from another deft., an indorsee of the bill, a cheque drawn upon his account at the C. bank for the amount due upon the bill. Pltfs.' collector presented the cheque for payment at the C. bank, but, instead of being paid in cash, he received a document called a "banker's payment," as was customary when a bank, being payee of a cheque, presented it for payment. Immediately after receiving the "banker's payment," pltfs.' collector was induced by an unfounded representation of a clerk in the C. bank to return it to the clerk. Pltfs. did not afterwards obtain cash for the cheque, which was treated by pltfs. & the C. bank & the indorsee of the bill as a cheque which had not been paid:—**Held**: though the delivery of the "banker's payment" to pltfs.' collector was in law a payment of the cheque, yet as pltfs. had in fact never been the amount due upon the bill, the bill had not discharged, & pltfs. as holders for value were to recover the amount from the acceptor of the bill. **LONDON BANKING CORPN., LTD. v. [ ]** (1898), 14 T. L. R. 200; 3 Com. Cas. 105.  
further, **BANKERS & BANKING**, Vol. III., p. 215.

**2339. Must be of principal, interest, & costs in full.**—A holder of bills of exchange, drawn upon & accepted by co. A. & indorsed by co. B., proved the bills against both cos., which were in liquidation, & received dividends from both estates. The liquidator of co. A. applied for an order for delivery up of the bills, on payment of a balance arrived at by treating all dividends paid by co. A. as in reduction of principal, & those paid by B. as applied first in payment of interest, &

then, as to the surplus, in reduction of the principal:—**Held**: the balance was calculated on an erroneous principle, & the creditor could not be required to deliver up the bills until he received his principal, interest, & costs in full.—**Re JOINT STOCK DISCOUNT CO., WARRANT FINANCE CO.'S CASE** (1870), L. R. 10 Eq. 11; 39 L. J. Ch. 417; 18 W. R. 901.

## 5.—PART PAYMENT AND SATISFACTION.

**2340. By acceptor—Whether drawer discharged.]**  
—If the indorsee of a bill accepts but twopence from the acceptor, he can never after resort to the drawer.—**TASSELL v. LEWIS** (1695), 1 Ld. Raym. 743; 91 E. R. 1397.

*Annotations*:—**Reid.** **Walwyn v. St. Quintin** (1797), 1 Bos. & P. 652. **Mentd.** **Brown v. Harraden** (1791), 4 Term Rep. 148; **Morris v. Richards** (1851), 45 L. T. 210.

**2341. — & further security for residue—**  
**After judgment & execution—Whether indorser discharged.]**—If the indorsee of a bill having sued the acceptor to judgment, & taken out execution, receive of him a sum of money in part payment, & take his security for the remainder, with the exception of a nominal sum only, he is thereby precluded from afterwards suing the indorser.—**ENGLISH v. DARLEY** (1800), 2 Bos. & P. 61; 3 Esp. 126 E. R. 1150.

**Expld.** **Clark v. Devlin** (1803), 3 Bos. P. 363. **Distd.** **Fentum v. Pocock** (1813), 5 Taunt. 192. **Consd.** **Claridge v. Dalton** (1815), 4 M. & S. 226. **Reid.** **Rowe v. Young** (1820), 2 Bll. 391; **Goring v. Edmonds** (1829), 6 Bing. 94; **Combe v. Woolf** (1832), 8 Bing. 150; **Michael v. Myers** (1843), 1 Dow. & L. 792; **Owen v. Roman** (1850), 13 Beav. 196; **Duncan, Fox v. North & South Wales Bank** (1880), 6 App. Cas. 1. **Mentd.** **Badnall**

**2342. By drawer—Whether indorser discharged.]**  
—Where part of a note is received of the drawer, the indorser is not to be resorted to for the rest.—**KELLOCK v. ROBINSON** (1727), 2 Stra. 745; 93 E. R. 822.

—**Consd.** **Walwyn v. St. Quintin** (1797), 1 Hull v. Pittfield (1744), 1 Wils. 46.

**Acceptor discharged pro tanto.]**  
The indorsee of a bill of exchange having received part of the contents from the drawer, cannot recover more than the residue from the acceptor.—

l. in a mtge. of the interest of one of defts. in the vessel, & an insurance policy the vessel for the am. At or about the time the mtge. it was agreed t. his own insurer on of

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of a third as required by at & pltf. on the note subsequently & the was by the latter to

the for — due, a & unanswered pltf.'s of order was 1890), 42 N. S. R. 246.—CAN.

U. C. R. of in

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not recover.—**PITNER & v. MAXLEY** (1902), 32 N. C. R. CAN.

One of

of the branch on which it was drawn: **Held**: the cheque had not

C.

**PART XIV. SECT. 2, SUB-SECT. 5.**

drawer — Acceptor charged pro tanto.]—Part payments made by a drawer, to the holder of a bill of exchange & allocated by the drawer at the time of payment towards



## PART XIV.—DISCHARGE.

**BACON v. SEARLES (1788), 1 Hy. Bl. 88; 126 E. R.**

<u>Ridd</u>	Jones v.	C.
<u>Reid</u>	Lackington v. Combes	S.
<u>Turner</u>	Peck (1841), 9 M. & W. 196.	Dilans
<u>James</u>	(1850), 19 L. J. Q. B. 445.	

**2344.** ———.—) Where, after an action is brought by indorsee of a bill of exchange against acceptor, the drawer pays part of the amount, the indorsee, unless he be suing as a trustee for the drawer, should take a verdict against the acceptor for the balance & interest only, & when he is paid, he should give the bill up to the drawer. ———.

**v. BROOK (1841).** Car. & M. 57, N. P.

**Mentel. Williams v. James (1850). 15 Q. B.**

2345. ————A. & Co., B. & Co., & deft. had all drawn bills largely upon each other, & certain of the bills, which had been accepted by deft., were in the hands of plffs., as *bond fide* holders for value, having been indorsed to them from A. & Co. & B. & Co. respectively. Plffs. had received from A. & Co., from B. & Co., & from deft. certain payments on account of the bills, & they sued deft. upon the same bills, giving him credit for the payments made by himself only, & not for by A. & Co. & B. & Co., claiming to hold for the use of the drawers. Deft. offers to pay to plffs., in full, all principal, & expenses due upon the bills, after taking for the payments already made by him, & also for the payments by A. & Co. & B. & Co., & he sets up the amount into ct. —Held: though the bills were not strictly accommodation bills, it was the case in which the holder could sue for & on behalf of the drawers, & deft. was entitled to credit for all the payments, & the sum paid was sufficient.—COOK v. LARSEN (1883), 13 S. 543; 1 New Rep. 280; 32 L. J. C. P. 121; 1 L. T. 712; 9 Jur. N. S. 823; 11 W. R. 143 E. R. 215.

83; *Re* 1  
Hirsch and Punamchand v. Temple,  
**Reid. Re** Overend, Gurney, *Ex p.*  
Fox, Walker, *Ex* 2 K. B. 483;  
9111 2 K. B. 330.  
(1868), L. R. 6 Eq.  
15 Ch. D. 400.

— Satisfaction in full.—Law where made given effect to.]—H., a merchant at the drawer of bills of exchange on merchants at Liverpool, paid the holder of one of the bills upon its becoming due a part of the amount of the bill,

both parties being at that time abroad, but such payment was made & received in full satisfaction of the bill, which payment, according to the law of the country where the bill was made, was conclusive to be in full satisfaction of a bill:—*Held*: Payment afforded a good defence to an action on the bill in England.—*RALLI v. DENNISTOWN* (1851), 6 Exch. 488; 20 L. J. Ex. 278; 17 L. T. O.

**Wentz, r.**

**By Indorser—Whether drawer**

In an action by indorsee against drawer, though the indorser has paid part of the money to the indorsee, he may recover the whole sum in the bill against the drawer.—*JOHNSON v. KENNION* (1765), 2 Wils. 202; 5 C. & P. at p. 500, n.; 95 E. R. 800.

— **Consd.** Bacon v. (1788), 1 Hy. Bl. 88 ;  
Walwyn v. M. Quintin (1797), 1 P. 652 ; Jones v.  
Reid v. Furnival  
5 C. & P. 499 ; Cook v. Lister (1863), 13 C. R. N. S.  
1. **Mentd.** Heilbut v. Nevill (1869), L. R. 4 C. P.

**2348.** ———.— If the holder payment of the indorser, he may still recover the residue against the drawer, if not the whole.—  
WALWYN v. ST. QUINTIN (1797), 1 Bos. & P. 652 ;  
E. R. 1115.

**Conrad.** *Cory v. Scott* (1820), 3 B. & Ald. 619.  
**I.** *Kemble v. Mills* (1840), 1 Man. & G. 727; *Jones v.*  
 (1850), 9 C. B. 173. **Mond.** *Carter v. Flower*  
 (1847), 16 M. & W. 743.

**2349. By stranger--** When satisfaction of whole debt.]--If one is sued on a bill of exchange, & it appear that plff. has agreed with a third person that if he will advance part of the sum for debt, plff. will take that in discharge of the whole debt, & such third person so advances it, that is a defence to the act  
1 C. & P. 557, N. P.

T. L. R. 178. *Reid. No Barnes (1861), 4 L. T.*

**Discharge pro tanto.]**—A bill of  
was drawn by A. on B., & indorsed to C.  
bill was not satisfied when due, but part payments  
were afterwards made by the drawer &  
Two years after it had become due, D. paid  
balance to C., the holder, & the latter indorsed  
bill & wrote a receipt on it in general terms :  
*Held* : It appearing by the receipt that D.  
the balance not on the account of the acceptor or

his liability on such bill act as a

In the on the

8. AF



ed.) - Where money has been  
from

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of the  
r.

1. *pro tanto.*  
H. A.

sum of \$18,762.02 for

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of



**WILLIS**  
**LINE**

is in fact



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**band**

126

In an action by D. to  
the notes held by the bank  
the effect of

472

(1906), 37 N. C. R.

2350 H. — Left. no.

sold & delivered & work & labour  
which were renewed from time to  
The notes were signed by M. an  
with

note of his own in respect of  
debt, & on his death, p<sup>l</sup>ss. a  
make his estate liable on it  
any actual payments by M. on his note

442

2.—By p and  
5, 6, 7, 8 &

, but in order to acquire an interest in the bill as purchaser, it might be indorsed by D. after it became due, so as to give the indorsee all the rights which C., the holder, had before the indorsement, & such indorsee might recover from the drawer the balance unpaid by him.—**GRAVES v. (1832), 3 B. & Ad. 313; 110 L. R. 117.**

**v. L. & Y. Ry. Co. (1871), 6**  
**v. (1837), 6 Ad. & El.**  
**H. & N. 779. Mentd.**  
**v. Cooke (1848), 6 Dow. & L. 157; Jordan v.**  
**(1851), 5 H. L. Cas. 185; Simpson v. Accidental**  
**(1857), 2 C. B. N. S. 257.**

**2351.** ———. ———. Deft. who pleads payment to a promissory note, & proves payment of part only, is entitled to a reduction of the damages *pro tanto*. **LORD v. FERRAND (1814), 1 Dow. & L. 630; 13 L. J. Ex. 111; 2 L. T. O. S. 332.**

**2352. Tender — Whether good.** — *Assumpsit* by payee against maker of a promissory note for £15 9s. 4d., payable on demand, averring a demand on a particular day. Plea, as to £3, parcel, a set-off due at the time when the note was demanded, & ever since, concluding with a verification & prayer of judgment, & as to £12 9s. residue, that at the time of the demand deft. tendered plff. £12 9s. 4d., & had always, from the time of making his promise, as to £12 9s. 4d., been ready & willing to pay that sum, & brought same into et., etc., concluding with a verification & prayer of judgment. Replication to the first plea, a traverse that any set-off was due at the commencement of the suit, on which issue was joined; to the second, that, before the making of the alleged tender, & before & at the time of the making of the demand & refusal thereafter mentioned, a larger sum than £12 9s. 4d., to wit, £15 9s. 4d., including the sum of £12 9s. 4d., was due upon the note, & that before the tender plff. demanded payment of the sum of £15 9s. 4d., which so included the £12 9s. 4d., but deft. refused to pay the £15 9s. 4d., & that at the time of such demand & refusal, no set-off or other just cause for non-payment thereof existed:—**Held:** the replication was good.—**COTTON v. GODWIN (1840), 7 M. & W. 147; 9 Dow. 703; 10 L. J. Ex. 243; 151 E. R. 715.**

60. ———. ———. **Expd. Brandon v. Newington (1842), 7 Jur.**  
**Consd. Hesketh v. Fawcett (1843), 2 Dow. N. S. ———**  
**v. Clark (1848), 5 C. B. 365.**

—].—**Semble:** where a sum is due on one entire contract, as on a bill of exchange or promissory note, & deft. pleads the tender of a smaller sum, plff. may reply that he demanded the larger sum & that deft. refused to pay it.—**HESKETH v. FAWCETT (1843), 11 M. & W. 356; 2 Dow. N. S. 827; 12 L. J. Ex. 326; 1 L. T. O. S. 110; 152 E. R. 841.**

—**Expd. Dixon v. Clarke (1847), 16 L. J. C. P.**  
**Mentd. Re Aykroyd (1847), 1 Exch. ———**

**2354. By maker—Smaller sum in full discharge of judgment debt—Whether joint maker discharged.**—Two persons joined in a joint & several promissory note as co-sureties for a third person. One co-surety having been sued to judgment by the creditor for the full amount, paid a smaller sum "in full discharge of the debt & costs in the action against me." In an action by the creditor against the other co-surety, it was found that there had been no intention between the parties to the first action that any right of plff. or the first co-surety against the second co-surety should be discharged:—**Held:** plff. was entitled to recover in the second action.—**CARDWELL v. SMITH (1886), 2 T. L. R. 779, D. C.**

Discharge of parties to joint & several notes & acceptances, *see* Sect. 9, *post*.

## 6.—RENEWAL OF INSTRUMENT OR TAKING FRESH INSTRUMENT.

*See* Sect. 11,

## SUB-SECT. 7.—APPROPRIATION OF PAYMENTS.

Nos. 2322, 2323, *ante*, & generally, **BANKERS BANKING, Vol. III., pp. 179–181; CONTRACT.**

deft. co.  
CAN.  
2350 III.  
or  
a  
v for  
the  
was not entitled to recover  
of bkpts.  
—Dick &  
Jur. 1.  
2350 v.  
note, T., one of  
payment. It  
furnished plff. with groceries, the  
accounts for which were stated in the  
passbook to be settled, but it  
did not appear that any money passed:  
—**Held:** the price of the goods must  
be deducted from the note.—**ANONIMUS**  
**2 L. C. L. J.**

on several  
For whose benefit payment  
gave deft. a promissory  
note for the price of goods purchased  
from him, which note plff. discounted  
for deft., who received the proceeds;  
when the note became due, it was  
renewed by H., & the new note in-  
dorsed by plff. Before the renewal of  
the note, H., who was largely indebted  
to plff. as the drawer of a number of  
other notes, paid plff. a sum of money  
without making any appropriation of  
it; he soon afterwards asked plff. to  
him credit for it, for the benefit of  
his indorsers; but the evidence left it  
ain whether it was for  
t of his accommodation  
or for his indorsers generally, &  
I been given for plff.  
for the amount of the note, without  
any deduction on account of the  
money paid by H.:—**Held:** a new  
trial should be granted, to ascertain  
whether the indorsers generally were  
entitled to participate in the payment  
by H.—**COMMERCIAL BANK v. WILLES-**  
**(1868), 1 Han. 21**



# 8.—NEGOTIATION AFTER PAYMENT— RIGHT TO RE-ISSUE.

1882 Act, ss. 37, 59

## . Right to re-issue—Bill paid by drawer.]—

the drawer of a bill payable to his own order, & indorsed by him to T. & by T. to B., upon the bill being dishonoured, paid the amount to B., who struck out his own & T.'s indorsement, & returned it to the drawer, & the drawer afterwards it to plffs. :—*Held*: plff. might

:—*CALLOW v.*

(1814), 3 M. & S. 95; 105 E. R.

*Id.* Hubbard v. Jackson (1827), 4 Bing. 390; 3 C. & P. 134; 1 Moo. & P. 11; 1 L. J. O. S. C. P. 4; 130 E. R. 818.

*Id.* 13 C. B. N. S. 543. *Id.* Broadhurst (1850), 9 C. B. 1 (1851), 5 B. & S. 613. *Id.* Jowell v. Parr, 13 C. B.

2356.

A bill payable to the order of the drawer having been dishonoured by the acceptor & paid by the drawer when due: the drawer might indorse it over a year & afterwards, & his indorsee might receive the acceptor. —*HUBBARD v. JACKSON* Bing. 390; 3 C. & P. 134; 1 Moo. & P. 11; 1 L. J. O. S. C. P. 4; 130 E. R. 818.

*Annotation*:—*Reid*, Jones v. Broadhurst (1850), 9 C. B.

2357.

Note paid by maker.]—A note payable to A. or order on demand cannot be after payment by the maker. —*BARTHELMY v. CADDY* (1838), 9 Ad. & El. 275; 1 Per. & Dav. 207; 1 Will. Woll. & H. 724; 8 L. J. Q. B. 31; 112 E. R.

*Id.* Glasscock v. Balls (1889), 24 Q. B. D. *Id.* Morley v. Culverwell (1840), 7 M. & W. 174. *Id.* Nash v. De Freville, [1900] 2 Q. B. 72.

2358. — Bill satisfied before maturity—By drawer.]—The drawer of a bill of exchange, before it became due, agreed with the acceptor, that on his giving a certain mtge. security for the amount, he, the drawer, should deliver up to him the bill of exchange as discharged & fully satisfied. The acceptor executed the mtge., & received back the bill, uncanceled:—*Held*: the drawer was liable on the bill to a party to whom the acceptor afterwards indorsed it for value, before it became due.

A plea, in such an action, that the bill was paid by the acceptor before it became due, & afterwards re-issued by him without any new stamp, can be supported only by proof of actual payment in cash, & not by evidence of any arrangement

between the drawer & the acceptor, whereby the bill was treated as being satisfied. —*MORLEY v. CULVERWELL* (1840), 7 M. & W. 174; H. & W. 13; 10 L. J. Ex. 35; 4 Jur. 1103; 151 E. R. 727.

Ex.

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No.

Bill discounted by acceptor.]—If the acceptor of a bill discounts it, he may re-issue it, so as to charge the drawer.

Nothing will discharge either drawer or acceptor but payment to law merchant, i.e., payment when due, or payment for the of discharging & satisfying the bill; & if discounts the bill for the drawer, & then it, the latter will be liable upon it at the suit of a bond fide holder, & the transfer to the acceptor upon discount will operate as an

transfer by way of indorsement, being under the impression that the bill is discharged by coming into the hands of the acceptor, nor will ment of the amount, less the discount, be a payment of the bill by the acceptor. a bargain between the drawer & acceptor in such a case, that the bill shall not be re-issued or transferred, would bar the action on the bill against the drawer, by a party taking it with e of the fact of such bargain. *ATTEN-* L. J. Ex. 244.

, also, Nos. 2204, 2276, 2279, 2282, 2283, 2310, ante, & Part

## . D. - PAYMENT BY MISTAKE.

*See, also*, in Part IX., Sect. 3, & Part XIII., 9, ante.

. Recovery of—By acceptor—From innocent e—Forged An in cannot to refund

paid him on a (1762), 3 Burr. 1354; 1 Wm. Bl. E. R. 871.

*Id.* K. B. *Id.* Bruce Ryde (1814), 5 Taunt. 10.

on defendant, per MCKAY (1866), 18 C. —CAN. (1815) 1824).

## PART XIV. SECT. 2, SUB-SECT.

Right to re-issue—Bill Accommodation bill.]—A

is accepted for the

it

of maturity, is taken up by the & if it be

for v.

the

R. & S. C.

at a bank for

it over after it

. BALDWIN (1837), 5 L. M. 444.

J. —

a note to the order of

note was made by

& ind

same to maturity, & not payee indorsed &

it was then returned to B. & Co.,

&

it to

on defendant, per MCKAY (1866), 18 C.

—CAN.

settled

of his own funds. —*COVILLIER v.* (1848), 5 U. C. R. 159. —CAN.

## PART XIV. SECT. 2, SUB-SECT. 9.

2361 I. Recovery of—By induced by fraud

been induced to pay on a

the out-

R.

b. — Note paid indorser.]—An indorser who has paid a

2.—By  
9 & 10.)

& C.

, 13 C. B.

&

H. 7.

25.

satisfaction :

Bank v. Bank of  
Chambers v.

**Position of holder altered.**—When a bill due & is presented for payment, & is paid in good faith & the money is received in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid cannot be recovered from the holder, although on the bill subsequently prove to  
LONDON & RIVER PLATE BANK  
OF LIVERPOOL, [1896] 1 Q. B. 7; 65 L. J. Q.  
80; 73 L. T. 473; 1 Com. Cas. 170.

Bank, [1914] 3 K. B. 356. *Imperial Bank*  
v. Bank of Hamilton, [1903] A. C. 49.

**From indorsee—Bill indorsed without authority.**—A. without authority a bill of exchange to A. & B., who received from the acceptor. *Seemle*: the money to have been paid on a debt, might recover it either as money paid by A. & B. to his use, or as money by him to A. & B. *EAST INDIA CO. v. PRINCE*, Ry. & M. 407, N. P.

**Or his agent—From holder—No notice of forgery given on date of maturity.**—A bill, purporting to have been accepted by A., was presented for payment to his bankers on the day when it became due. The latter, believing it to be the genuine acceptance of A., paid the amount, but on the following day, having discovered that the acceptance was a forgery, they gave notice of that fact to the party to whom they had paid the bill, & required him to return the money:—*Held*: the holder of the bill was entitled to know, on the day when it became due, whether it was honoured or dishonoured, & no notice of the forgery having been given on the day the bill became due, the parties who had paid the money were not entitled to

H. & C. 1 L. 329; 4 Man. & Ry. K. R.  
81 O. S. K. B. 77; 109 E. R. 335.

*Roberts v. Tucker* (1851), 30 L. J. Q. B.  
v. *Keel* (Comrs. 1880), 6 Q. B. D.  
*Bank v. Walker* (1883), 11 Q. B. D.  
*Bank v. Barro* (1893), 11 T. L. R.

H. 7. *Imperial Bank*  
v. *Appl.*  
1914, 3  
H. & N. 210;

, 13 C. B.

**he held acceptance.**—L. placed in hand a fund, out of which plff. was satisfied certain acceptances. Debt. sent to plff. that he held one such & thereby induced plff. to pay him the of the alleged acceptance out of the fund:—*Held* plff. might maintain money had & recd. debt. *Seemle*: L. might also have the action.—*HOLT v. ELY* (1853), 1 E. & B. 17 Jur. 892; 1 C. L. R. 420; 118 E. R. 634.

had to of the mch- in other

&

1. — By order—From stranger.]  
—Plff. paid the amount of a note to debt., under the belief that it had been assigned to him, with a note for one of the instalments of which the note was given, whereas it had been

B.

to to

(1879).

From person discounting bill—  
application of partnership funds.]—

Plff. & W. were partners, & during the partnership had dealings with debt. W. was indebted to them on his own account, & at his request they paid £1,000 of the partnership money, paid by him to them, to the liquidation of his private debt. Plff. did not know of or authorise that mode of applying the money, & had not conducted himself in such a manner as to make it reasonable for debt. to believe that he had authorised it, but they did in fact believe he had. Upon the dissolution of the partnership, it appeared from the accounts that the firm owed debt. more than £5,000, & plff. accepted bills for the whole balance apparently due. The bills were handed to debt. for the purpose of being discounted. Before they arrived at maturity, plff. discovered the application by debt. of the £1,000 to W.'s private debt. He nevertheless met the bills, at the same time informing debt. that he did so under protest, & only to save his father's credit, whose name was on the bills as drawer. In an action to recover the £1,000, as money paid under a mistake of fact:—*Held*: (1) debt. could not retain the money as against W.'s private debt, plff. never having authorised its appropriation to that debt, nor conducted himself so as to give them reasonable grounds for believing that he had; (2) plff. having been ignorant of the real facts of the case when the bills were drawn, had not precluded himself from recovering, by meeting them at maturity when he had discovered the facts, inasmuch as his so doing could not be regarded as a voluntary act.—*KENDAL v. WOOD* (1870), L. R. 6 Exch. 243; 39 L. J. Ex. 167; 23 L. T. 309, Ex. Ch.

2367. — By payer for prior indorser's honour  
From holder—Forgery discovered before holder's remedy against prior indorser lost.]—Certain bills of purporting to have (inter alia) the in- of H. & Co., bankers of Manchester, were presented for payment in London, at a house where the acceptance appointed them to be paid, being refused, the notary, who

took them to plff., the London correspondent of H. & Co., & asked him to take up the bills for their honour. He did so, & struck out the indorsements subsequent to that of H. & Co., & the money was paid over to debt., the holders of the bills. The same morning it was discovered that the bills were not genuine, & that the names of the drawer, acceptor, & H. & Co. were forgeries. Plff. immediately sent notice to debt., & demanded to have the money repaid. The notice was given in time for the post, so that notice of the dishonour could be sent the same day to the indorsers: plff. having paid the money through a mistake having been discovered before debt. had lost their remedy against the prior indorsers.—

*v. JOHNSON* (1824), 3 B. & C. 428;  
; 3 L. J. O. S. K. B. 58;



# PART XIV.—DISCHARGE.

902. **Exptl.**  
**Repl. L**

- By indorser—From holder—Bill to be void for insufficient stamp.]—A bill was drawn in Ireland upon the stamp by law, which was less in amount than the required for such a bill drawn in but there on the face of the bill to show that it been drawn in Ireland. The holder in England neglected to present it for payment, & held it a month after it was due. The acceptor having become bkpt. the holder applied for payment to the indorser who had sent it to him. The latter refused to pay it, that the holder had made it his own by. The holder then threatened to sue him, that the bill was void, on the ground that it was drawn on an improper stamp. The indorser inspected the bill, & finding that the stamp was not that required for a bill of the same amount drawn in England, but ignorant of the fact that it had been drawn in Ireland, paid the amount to the holder:—*Held*: this was money paid in ignorance of the fact, & there being no laches imputable to the party who paid the money, he might recover it back, in an action for money had & received.—*MILNES v. DUNCAN* (1827), 6 B. & C. 671; 9 Dow. & Ry. K. B. 731; 5 L. J. O. S. K. B. 108 E. R. 598.

—*Consd.* Kelly v. Solari (1841), 9 M. & W. 420; 4 Man. & G. 11.  
18 C. B. 273; Pooley v. *Mentd.* Hamlet v. 644; Moore v. Fulham Vestry, (1895) 1 Q. B.

2369. — By agent or payer for acceptor's honour—From holder—Wrong bill taken up—Holder prejudiced.]—A person took up a bill of exchange of A.'s due on Oct. 10 by mistake for another bill of A.'s, which was due on Oct. 18. On Oct. 19 he demanded the money back from the holder of the bill of the 18th, who refused to refund it:—*Held*: the holder having been prejudiced by being precluded from giving the necessary notice of dishonour, was not liable to refund the money.—*v. MOORE* (1859), 33 L. T. O. S. 121.

2370. — By indorsee—From indorser—Mistaken belief that bill met.]—A., the indorsee of a bill of exchange, resident abroad, indorsed it to defts., his agents in London, for the purpose of collection. Defts. indorsed the bill to plffs., & sent it to them for the same purpose, & they for-

warded it agents. Plffs., under a paid, & sent them a cheque for the Thereupon defts. intimated same to A., & him with the amount of the bill:—*Held*: as had wrongfully informed defts. that the bill had been paid, they could not recover the amount of the bill when defts. had nothing to do with the mistake of fact, & plffs. were estopped by the representation which they had made to defts., & upon which defts. had acted.—*DEUTSCHE BANK v. BEHRE & Co.* (1895), 73 L. T. 669; 12 T. L. R. 106; 1 Com. Cas. 255, C. A.

By banker.]—*Sec. generally*, *ING*, Vol. III., pp. 214-217.

Of forged or altered cheque or III., pp. 230-237.

## SATISFACTION.

2371. After twenty years.]—A note of twenty years' standing shall be presumed paid.—*6 Mod. 1* R. 780.

2372. v. 5 E. 1 N. 1 16 140

2373. — Payee resident abroad.]—Where a promissory note made abroad was overdue more than twenty years:—*Qu.*: whether the jury were bound to presume payment, notwithstanding the d abroad during all that time.

v. WATKIN ( Ry. K 16. modat K. B. 24 L. A. 2 M. c.

2374. — In May, 1857, J. gave to R. a note for payment of £150 3 months after demand, no interest being reserved. J. died & R. in 1878. The note was in R.'s at his death, & he had indorsed on it in 1857, & Aug., 1858, each for half J.'s estate to prove on

2370 L.

A hundi pay to

sent for by G. (drawer) to B. of (plff.), & sent to defts. for plffs., who sent it to defts. for no authority from & was not agent, of to as an hundi from to it.

made no inquiries as to the or respectability of R. & paid the hundi on the faith of the forged signature: the of the hundi from defts., unless of such negligence or as would stop them from disputing the validity of the payment to R.—*BRUPUTRAM v. HANI PRASO* C. W. N. 313.—*IND.*

PART XIV. SECT. 2, SUB-SECT. 10. m lengthy period.)—*Donnie* STEVENSON (1823), 2 Sh. (Ct. of Sess.) 5.—*SCOT.*

e. No evidence of consideration—(Or of claim by deceased payee.)—In an action by plff. as administratrix of Mrs. T., widow of T., deceased, against defts., T.'s administrators, on two promissory notes alleged to have been made by T. to Mrs. T., there was no evidence of the wife having given any value for the notes, or of being possessed of or claiming any interest in them in her lifetime, nor that they came to plff. among papers in Mrs. T.'s possession at the time of her decease, while the reasonable presumption from the evidence was that if Mrs. T. ever had any claim on them it had been paid. Prior to the commencement of the action, on the payment by defts., as administrators of T., to plff. of a sum of money owing to her as said administratrix, she executed a release

of all claims against the estate:—*Held*: in these circumstances plff. clearly could not recover.—*DENNAM v. BREWSTER* (1878), 28 C. P. 607.—*CAN.*

p. Note secured by mortgage of lease—Payee ceasing to demand payment of rent from tenant.]—Def't. made a promissory note to the order of H., the mortgagee, of a lease as collateral security for the payment of the note. H. notified the tenant that the rent must be paid him & not to the original lessor, def't. Rent was accordingly so paid up to a certain date after which H. did not demand it of the tenant:—*Held*: def't. was not liable *BARNES v. GILBERT* (1904), 4 O. 466.—*CAN.*

q. By proper diligent—How rebutted.]—The presumption that bills retired with a general receipt were paid with the funds of the proper obligant, may be rebutted by the terms of his own correspondence.—

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Considering what has occurred & the time that d, payment is to be presumed (JESSEL, R.).—*Re RUTHERFORD, BROWN v. RUTHERFORD*, 14 Ch. D. 687; 49 L. J. Ch. 634; 43 L. T. 28 W. R. 802, C. A.

—*Held*. Bradford Old Bank v. Sutcliffe, [1918] 2 K. B. 832.

**2375. Bill taken in payment of debt—Creditor suing on original consideration.**—*Assumpsit* by plff. for wages as a clerk to defts. To prove payment of £140 in part discharge of plff.'s demand, gave in evidence, that they had given him of the house to that amount. Plff. contended that, before that could be deemed a discharge to that amount, defts. should prove the bills to have been paid:—*Held*: that was not necessary, as, where a party took bills in payment of a debt, the ct. would presume the money was received, unless the contrary was shown. *v. HARTWICK* (1801), 4 Esp. 40, N. P.

*Annotation*:—*Reid*, *Hickling v. Hardey* (1817), 1 61.

ENT AND

**2376. Receipt—On bill.**—A general receipt on the back of a bill of exchange is *prima facie* evidence of its having been paid by the acceptor, & will not of itself be evidence of a payment by the drawer, though it is produced by him.—*SCHOLEY v. WALSHY* (1700), Peake, 34, N. P.

*Annotations*:—*Auld*, *Graves v. Key* (1832), 3 B. & Ad. 313. *Consd.*, *Phillips v. Warren* (1845), 14 M. & W. 379.

**2377. In whose handwriting.**—Payment is not to be presumed from a

indorsed on the bill, unless this receipt is shown to be in the handwriting of a person entitled to demand payment.—*PIEL v. VANBATENBERG* (1810), 2 Camp. 439, N. P.

**2378. ——— Payment by stranger.**—The acceptor of a bill of exchange, on its presentation to him when due, did not take it up, but afterwards, on the same day, a person unknown called at the bankers' where it lay, & paid the amount, & received back the bill, with a general receipt indorsed upon it. In an action by indorsee against acceptor, the bill was produced by plff., bearing that receipt:—*Held*: no evidence of payment of the bill by the acceptor.—*PHILLIPS v. WARREN* (1845), 14 M. & W. 379; 14 L. J. Ex. 280; 5 L. T. O. S. 267; 153 E. R. 522.

—*Reid*, *Thorne v. Smith* (1851), 10 C. B. 659. *Embricos v. Anglo-Austrian Bank*,

**2379. ——— Whether stamp necessary.**—In an action by indorsee against drawer of a bill of exchange for £9 5s., deft. pleaded payment by M., the acceptor, & in support of that plea, offered in evidence the following document, without a receipt stamp, signed by plff.: "Myself v. M.—M. has this day left with me £10 on account of the debt, interest, & costs in this action";—*Held*: it was admissible in evidence without a receipt stamp.—*LEVY v. ALEXANDER* (1849), 4 Exch. 485; 19 L. J. Ex. 113; 154 E. R. 1304.

**2380. Production of bill—By acceptor.**—production of a bill of exchange from the custody of the acceptor is not *prima facie* evidence of his having paid it, without proof that it was once in after it had been accepted.—*I* (1810), 2 Camp. 439, N. P.

**2381. ——— Not in issue.**—To an action by indorsee against maker of a promissory note, he pleaded that before the making of the note in the declaration mentioned, he made another note for the accommodation of the indorser, who

of deft.:—*Held*: in

of

reputations in

of the in, that it

by him,

at This brought action on plff. could maintain

made in ed to it note: at law

*facie* presumption that been paid was rebutted. *KONG v. RAMANATHEN CHETTY* I. L. R. 19 Calc. 334; 6 C. W. N. 401; 29 L. R. Ind. App. 43.—IND.

not appl 133), 14 OOT.

L. R. R.

MILLER v. MILLER

1 C. P. 240.—

the to bank, was

missory note, payable to order, plff. may prove by witnesses, the matter being commercial, that payments set up by defts. & established by cheques & receipts of a date subsequent to that of the note, have been made in reality to discharge a prior note.—*RENAUD v. BRACCHENIN* (1903), Q. R. 33 B. C. 193.—CAN.

**2380 i. Production of bill or note—By defendant.**—Pending a suit on a note, was returned, as plff. pro- y mistake to deft. Deft. set of

**2380 iii. ———**—Circumstances in which:—*Held*: the admission by the maker of the drawing of the hundi for value received laid on him the burden of proving payment, & though the possession by him of the hundi was a circumstance in his favour, yet, as it did not in itself amount to proof of payment, the case probed was not thereby shifted on to plff.—*ANPIL v. MANJI HANRAJ* (1876), —IND.

**2380 iv.**—duction, by the promisor or maker of promissory note payable on a given date, without any indication upon its or proof atwade that it after maturity, is once that it was paid & at, or before that time. *v. ACCIDENT GUARANTEE CO.* (1914) Q. R. 32 B. C.

SCOT.

XIV. SECT. 2, SUB-SECT. 11

On bill or

is

the

up

(1872), 11 W. R. 901.—

**2376 ii. ——— Indorsed thereon by mistake.**—In an adjustment of accounts between plff. & defts. a promissory note made by defts. in favour of plff. was delivered up to them with a receipt in full indorsed

ness to the when (1) —CAN. a suit on a & in

not by payment, accounted acc to turn the acc Own



## PART XIV.—DISCHARGE.

it to pltf., that when it became due, he, deft., made the note in the declaration mentioned, & gave it to the indorser to take up such prior note.

e then averred payment by the indorser to pltf., of the note in the declaration mentioned, & acceptance by pltf.:—*Held*: the only material part of the plea was payment of the upon, & such payment might be proved without producing the note, & all the averments as to the prior note were surplusage, which deft. was not bound to give any evidence of.—*SHEARM & BURNARD* (1839), 10 Ad. & El. 593; 2 Per. & Dav. 565; 8 L. J. Q. B. ; 3 Jur. 1122; 113 E. R. 225.

*Mont. Barre v. Jackson* (1843), 1 Y. C. Ch. v. *Armour* (1843), 3 Q. B.

, Nos.

**2382. Possession by joint maker.]**—In an action by indorsee against one of the makers of a joint & several note, for £102, deft. pleaded payment:—*Held*: the jury, on a conflict of evidence, might presume payment from possession of the uncanceled security by deft.—*BREMERIDGE v. OSBORNE* (1816), 1 Stark. 374, N. P.

**2383. Actual payment—Not arrangement where—by bill treated as satisfied.]**—*MORLEY v. WELL*, No. 2358,

for  
for payee.]—Pltf.

ceived by deft. for his payable to testator. The that he had paid deft., who him the note, which was still in his possession, though with the torn off.—*Held*: not necessary

14 U. C.

CAN.

y. *Entries in pass-book.*]—In a tion as to how far the interest on a bond had been extinguished, where defender averred that payments to a certain amount had been made, produced a jottings of payments to that but these, on a judicial examination, pursuer declared to have been made to account of interest due, not on the bond, but on certain bills, in which, likewise, defender was her debtor. The bills were all prescribed before the of the first jotting:—*Held*: the ents credited in the pass-book to be imputed to of the bond, & not to the *HAMILTON v. M* (1849), 22

note satisfied by an indorser suing in upon a note, produces it trial from his own custody, with indorsement there if by any accident, but in

the to 1 deft. whose cancelled.—*PRINCE v.* (1867).

of of a 10 L. C. R.

insolvent, in pltf. a of the

one sued upon.— 9 L. C. R.

of in & by him for et. &

the sum first indorsed, & :—*Held*: in so owner of not give the against pltf. 1. 3 O. B. 157.—CAN.

In an of a bill part was of that by the to the of the other

N. Z. L. R. 320.—N.Z.

In maker of an was the was the to

that he then wrote out a receipt while write. the top of the the stamp. The money alleged to been paid could not be traced by entirely uncorroborated, the

**2384. Payments before bill due.]**—To an action on a promissory note, dated Apr. 28, deft. pleaded, that after the accruing of the cause of action, he paid a sum in satisfaction:—*Held*: the plea was not su by payments made on account of Apr.

(1841), Drinkwater, ; 10 L. J. C.

**Misrepresentations—Entry of**  
A judgment had been given by A. for securing eight bills of exchange drawn by deft. & accepted by A. Five of the bills had been paid; the sixth had been indorsed to pltf., & the remaining two were in the hands of deft. A. became insolvent 6 months after pltf. had given deft. notice of the dishonour of the sixth bill. Deft. assigned to pltf., as trustee for A.'s creditors, judgment, & also the two bills of exchange in hands A. A year afterwards pltf.

upon the t against A., alleging at the the two bills assigned to pltf. as the only two remaining unpaid at the time of the

In an action afterwards by pltf. deft. on the sixth bill:—*Held*: pltf. was as against deft. from denying that the bill had been paid.—*WILKIN & GURKEN v. L. T. O. S. 207.*

c. MAILLOUX

for

that deft. had evidence was in- r. :—*Held*: admissible. 17 V. L. R.

the

out of

a firm, although from liability, wa bill pltf. 1ra. CAN.

that in

. R.

the R. 181.—CAN.

C. R.

of interest (Defy in making claim.)—Deft. made two promissory notes payable to his father's order, & in an action by the father's exec. to recover an amount alleged, to be due thereupon deft. alleged that by an agreement entered into between his father & himself the notes were satisfied. Deft. had paid a on the when will was read to him he had satisfaction for the amount of the O'NEILL

by payment  
8 & 4.]

Sub-sect. 11.

**2386. Whether drawer discharged—Intent of fact.]**—It is for the jury with what of a bill has been made by an indorsee, or not with such an  
to keep alive the liability of the drawer to  
**MUNLEY v. CUNARD (1861), 2 F. & F.**

**2387. Right to begin.]**—If in *assumpsit* on bills of exchange, with a count upon an account stated, deft. plead payment to the counts on the bills, & non *assumpsit* to the account stated, deft. is entitled to begin, unless plff.'s counsel have some evidence to give on the count upon an account stated.—**SMART v. RAYNER (1834), 6 C. & P. 721, N. P.**

**2388. —.**—In an action on a bill of exchange by indorsee against acceptor, deft. pleaded that it was an accommodation bill, & that a blank up & applied in discharge of that & other bills. Plff. replied that deft. "broke his promise without such cause as in that plea alleged"—**Held:** on the pleadings entitled to begin.—**FAITH v. M'INTYRE (1. & P. 44, N. P.**

—**Mentd. Kilpack v. Major (1842), 2 Q. B. 737.**

**2389. — Admission at trial.]**—In an a bill of u by indorsee against acceptor, deft. &  
Deft.'s upon all which issue was the trial, offered to & wished to  
**Held:** that admission of all the facts, of which was on plff., did not entitle to begin.—**PONTIFEX v. JOLLY (1830), 9 P. 202, N. P.**  
it to begin . 1

### 3.—ACCEPTOR HOLDER AT OR AFTER MATURITY.

Act, s. 61.

Part XXII.,

**2390. Not unless holder at or after maturity.**  
on a bill of drawn by  
by payable to the  
of W., & by him to plff. Tenth  
bill by it of the  
it was  
W., & that after it was delivered,  
W. was the holder &  
the bill became due, W. indorsed bill  
to H., one of defts., acceptors, with the  
of himself, & whereby he did divest  
of all right, etc., in & to the bill, & of the  
suing thereon, & of indorsing same again,  
the bill was so indorsed to deft. H. for valu-  
consideration, that H. continued to be the  
r of the bill from the time when it was so  
to him until it was delivered by H. to  
the indorsement in

XIV. SECT.

consisted of the  
[very of the bill by H. to plff., & that it  
never indorsed by W. otherwise than as in the  
plea mentioned, & that at the time of the delivery  
of the bill by H. to plff., plff. had notice of the

The twelfth plea was in similar terms  
to the tenth, except that it concluded with an  
that the bill was delivered by deft. H.  
to plff. after it became due:—**Held:** the plea  
contained a substantial answer to the action, as  
liability to sue on it, & the right to receive  
payment occurring in one of the acceptors at the  
when the bill became due, operated as a pay-  
ment & performance of the contract of acceptance,  
as to all the acceptors, so as to prevent any action  
afterwards being brought on that contract.—

**r. STEELE (1849), 4 Exch. 1; 19 L. J. Ex.  
13 L. T. O. S. 403; 154 E. R. 1100, Ex. (Ch.;  
S. C. sub nom. STEELE v. HARMER (1845), 14  
M. & W. 831.**

**Annotations:—****Ridd. Lowe v. Peakett (1855), 16 C. B. 500.  
Mentd. Woodson v. Woodbridge (1850), 13 Q. B. 470;  
Rush (1851), 11 C. B. 191; Jewell v. Parr  
B.**

Acceptor's right to contribution, see Sect. 12,  
. 5,

**2391. "In his own right."]**—In 1882 Act, s. 61,  
the expression "in his own right" is not  
in contradistinction to a right in a representative  
capacity, but indicates a right not subject to  
that of another person, & good against all the  
world.

Deft. gave three promissory notes to cover his  
indebtedness to the payee, & subsequently two  
more notes, in substitution for the first three &  
to cover further advances. All the notes were  
payable on demand & were given on the under-  
standing that they should not be negotiated. The  
payee indorsed all five notes generally to plffs.  
After the payee had so negotiated the notes deft.  
paid to him the amount due on the last two  
notes, but deft. was not aware that the payee had  
parted with the notes, & did not ask for or receive  
any of them from him. At a later date the payee  
obtained the five notes from plffs. by fraud, &  
handed them to deft. In an action by plffs. on  
the notes:—**Held:** deft., when he received back  
the notes, did not become holder for value, since  
the previous satisfaction of the notes by him was  
not a consideration given by him when he received  
back the notes, & as they were then overdue he  
acquired no better title than the payee had while  
they were in his hands, & plffs., being entitled to  
disaffirm the transaction  
the payee, by which the latter obtained  
of the notes, could recover in the action.  
**r. DE FREVILLE, [1900] 2 Q. B. 72; 69 L. J. Q. B.  
484; 82 L. T. 642; 48 W. R. 434; 16 T. L. R.  
, C. A.**

**r. King, [1901] 2 K. B.  
[K. B. 794.**

**Bill given by holder to acceptor in  
cheque—Cheque dishonoured.]**—The indorser  
of a bill is not discharged, by reason of the holder  
having given the bill to the acceptor, & received  
his cheque for the amount, which cheque was  
for want of effects.—**RIDLEY (BART.) v.  
Add.**

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extinguished.—Jo  
x (1914), 21 W. L.



## PART XIV.

appointed holder's  
& hold:

debt is discharged, action can be maintained on the note, even person to whom the exor. has indorsed it. Fox (1829), 9 B. & C. 180; 4 B. 18; 7 L. J. O. S. K. B. 148;

Consol. Re (1849), 4  
Mould. Hartrum (1894) 1 697.  
L. J. Q. B.

**2394. Holder appointed maker's executor—No discharge unless assets—Equitable assets insufficient.**—A. made a promissory note, payable, on demand, to his son B., & by his will devised to B. a freehold house, charged with £240, to be raised within a year after his death, & paid to his exors. for the liquidation of debts & legacies, & he made B. & C., another son, his exors. The two exors. proved the will, & B. took possession of the house, & afterwards indorsed the note to D., who sued the exors. thereon. To the B.

other pleas, not including  
if, that the note was made payable to B. on & that it was indorsed by B. to D. after the death of testator, & that B. at the time of such indorsement had assets of testator in his whereby the note was satisfied. The that ever came to the hands of B of £240 charged upon the house devised to him: Held: the plea was not proved, for the that B. had assets of testator in his hands at time of the indorsement of the note, was a

& the £240 was not legal, but equitable assets, & not available as assets until the expiration of the year.—LOWE v. PESKETT (1855), 16 C. B. 500; 24 L. J. C. P. 196; 25 L. T. O. S. 146; 1 Jur. N. S. 1049; 3 W. R. 481; 3 C. L. R. 1264; E. R. 854.

### 1.—BY WAIVER OR RENUNCIATION.

52 Act, s. 62.

**2395. By whom—Holder of note—By parol.** A holder of a promissory note may waive rights on it or discharge it by parol.—MAYHEW v. KERR (1849), cited in FOSTER v. 20 L. J. Ex., p. 391.

Annotation:—Mould. Foster v. Dawber (1851).

if, the first count of the declaration was issory note dated Dec. 7, 1845, made by deft. for payment of £500 & interest, on demand, to C., plff.'s testa was on a similar note for £500, dated Jan.

The third count was money for C. to deft., & for interest & money due from to C. on an account stated. Pleas, to the first

the making sums therein C. exonerated & discharged deft. from of the notes, (3) that, after the making of the it was agreed between C. & deft., that the should purchase, with his own money, a of paper marked with a 10s. receipt stamp, ould write on it as follows: "Received of D., deft., £1,080, being the interest on two notes, dated Dec., 1845, & J in full of all demands," & that deft. should C. to sign same, & that such a of the piece of paper so stamped, & such writing on by deft., & permitting C. be accepted by C. in full satisfaction of the causes of action. To the residue of the declaration, (4) non-accusped, (5) payment, & (7) a plea similar to the third. Replications, to the first & fifth pleas, denial of payment, to the second plea, *de injuriâ*, to the third & seventh pleas, that it was not agreed *modo et formâ*. At the trial, it appeared from deft.'s answer to a bill of discovery, that, in 1835 & 1842, C. lent to two sums of £500, upon the security of his notes, payable on demand, with interest was duly paid, & memorandum by C. on the backs of the notes. At length, the backs of the notes being covered with memoranda, it was arranged betw that new promissory notes should & deft. gave C. the notes on which brought. In Feb., 1846, C. told deft. that the £1,000 secured by he wished to give deft. a for same & interest due deft. to write out a for such £1,000 & interest, for him, C., a release & discharge, & thereupon deft. pu a 10s. receipt stamp, & wrote the

in the third plea, to deft., with the express object of him from payment of the £1,000 & No interest was afterwards applied for or paid. C. subsequently died, having bequeathed the notes to plff.: Held: (1) the transaction relating to the giving of the receipt did not to payment; (2) such transaction was not in support of the third & seventh pleas;

& as the obligation on a bill of it was payable, he discharged by otes were placed on the the second plea was good on motion for judgment *non obstante veredicto*.—FOSTER v. DAWBER (1851), 6 Exch. 839; 20 L. J. Ex. 17 L. T. O. S. 810; 155 E. R. 785.

Annotations:—Consol. Edwards v. Walters, [1896] 137. Rebd. Clay v. Turkey (1838), 27 L. J. Ex. 2;

### PART XIV. SECT. 4.

**2396 l. By whom—Creditor's trust of holder.**—Plea, on equitable grounds, to an action on a promissory note, that plff.'s intestate received the note from deft., & held it as trustee for B., & that while it was so held B., by express renunciation & waiver, discharged deft. from all liability on same, of which plff.'s intestate had notice:—Held: bad on demurrer.—CHAIR v. HAYTH (1866), 15 W. R. 74.—IR.

for B. it in of of  
& vi but will gave B. a the  
A. H. by his being made  
B. a bank & their agent account with law-agent for there for  
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*v. Pacey* (1802), 11 W. R. 21; *Cook v. Lister* (1863), 32 L. J. C. P. 171; *Abbey v. Crux* (1869), L. R. 5 C. P. 37. *Montd. Peace v. Halm* 11 Hare, 161; *Dollen v. Batt* (1859), 4 Jur. N. 1; *Morgan v. Rowlands* (1872), L. R. 7 Q. B. 493; *v. Baron*, [1818] A. C. 1.

**2397. — Holder of bill—By parol.** The holder of a bill of exchange may discharge the liability of the acceptor by parol, but for this the words must amount to an absolute of all claim upon him in respect of the bill.—*WHATLEY v. THICKER* (1807), 1 Camp. 35, N. P.

—In an action by acceptor of a bill of exchange, debt, that the drawer, before the indorsement, had waived the acceptance, & thereby exonerated the acceptor:—*Held*: bad, for not showing that the drawer was the holder of the bill at the time of the alleged waiver. *HARMER v. STEELE* (1849), 4 Exch. 1; 19 L. J. Ex. 31; 13 L. T. O. S. 403; 151 E. R. 1100, Ex. Ch.; *rearg. S. C. sub nom. v. HARMER* (1845), 11 M. & W.

Q. B. 470. *v. D.* 1851, 11 C. B. Jewell  
C. B. *Low v.*

**2399. At what time—Before acceptance—Liability under subsequent acceptance.**—A release of the drawee by the holder before the acceptance will not discharge the drawee from his liability under acceptance.—*DRAKE v. NETTER*, 1 Ld. Raym. 65; 91 E. R. 930.

*v. Manton* (1843), 5 Q. B. 247.

—Acceptance made in ignorance of agreement to release—Bill drawn at Rio accepted in London—Debt of firm trading in both places.—*Assumpsit* by indorsee against acceptor of a bill of exchange, & on an account stated. Plea, to both counts, that the acceptor was partner with A. S., that they carried on business in London by the style of M. S. & Co., & at Rio under that of S. & M., that debt, carried on the business in London, & S. at Rio, that the bill was made & indorsed at Rio by S. in the name of the firm, for a debt due to plffs. from debt. & S., & incurred by them at Rio in the name of the firm, that after the making of the bill, the firm of S. & M. came to an agreement with their creditors at Rio, according to the laws of Brazil, which was signed by plff. & the other creditors, to the effect that the liquidation of the debts of the firm should be carried on immediately, etc., & that the holders of bills drawn by S. & M. on the London house of M. S. Co., should be considered as creditors for cash but the respective dividends should be paid in a certain bank, until presentation of their bills not having been paid, but,

the payment in London verified, the five sums so deposited should be divided among the creditors, that the agreement was immediately acted upon at Rio, that debt. accepted the bill in England after such & in ignorance that it had taken place, that by the laws of Brazil the agreement operated as a discharge & release of the debt as to which the bill of exchange was drawn. Replication, *de injuria*:—*Held*: the plea was bad as to the first count at all events, as it did not appear, from it, that the creditors at Rio intended to discharge the London house, & that debt. was discharged either by the law of Brazil or by the terms of the agreement. *Semble*: if the plea had been good, it would have operated by way of discharge, not excuse, & the replication would have been bad.—*HARTLEY v. MANTON* (1843), 5 Q. B. 247; 1 Dav. & Mer. 410; 13 L. J. Q. B. 61; 2 L. T. O. S. 227; 8 Jur. 169; 114 E. R. 1242.

**2401. — Before maturity—Note payable month after demand.**—Where a promissory note was payable a month after demand, forgiveness of the amount of the note is no defence, unless the note be before the note has become payable. *v. GORDON* (1883), 1 Cab. & El. 105.

**2402. What amounts to—Must be express.**—Nothing but an express declaration by the holder will discharge the acceptor of a bill of exchange.—*DINGWALL v. DUNSTER* (1779), 1 Doug. K. B. 247; 99 E. R. 161.

*Annotation*: *Reid v. Ellis v. Galindo* (1784), 1 Doug. K. B. n.

**2403. — Statement by holder to acceptor—Settlement with drawer.**—B., the indorsee of a bill, arrested P., the acceptor, but finding that no consideration had been given for the acceptance, his attorney took a security from D., the drawer, & sent word to P., "that he had settled with D., & he need not trouble himself any further." D. afterwards became bkpt., & then B. payment of P.:—*Held*: this was an discharge, & B. could not recover from P. *v. PEKLE* (circa 1775), cited in 1 Doug. K. B., p. 249; 99 E. R. 162.

*l. Dingwall v. Dunster* (1779), 1 Doug. K. B.

**2404. — Statement by holder—That he would not trouble acceptor.**—A bill accepted for the accommodation of the drawee becoming due, A. expecting to have funds in his hands belonging to the drawer's son, took up the bill, in order to prevent proceedings against the drawer, on condition that he should be allowed to stand in the place of the indorsee & sue in his name:—*Held*: the acceptor was not discharged from an action brought by A. in indorsee's name, even though A. had declared he would not trouble the

of the Bills of Act be in *Held* to R.  
red, & when the jury have found in as O. L. R. 331  
of  
AUS. V. L. R. CAN. W. 27, 9 O. R. 48; 15 A.

a note in of plff. was, after in  
at plff.'s request, without  
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time or for forbearance of a  
a note is signed by the  
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# XIV.

v.

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**Acceptance annulled.]**—Pltf. sued deft. as acceptor of a bill. A book of pltf.'s was produced, in which the bill was entered, & over against it the following memorandum: "P.'s acceptance annulled." Pltf. having obtained a verdict, the ct. granted a new trial, on the ground of express discharge.—**WALPOLE v. PULTENEY** (1779), cited E. R. 162, N. P.

on further evidence the jury found for

**2406.** ——— **Memorandum by payee**—That he would not take principal.]—A note of hand given to testator:—**Held**: discharged by an entry in testator's hand, that debtor "pays no interest nor shall I ever take the principal unless eatly distressed."—**ASTON v. PYE** (1788), 5 Ves. 350, n.; 31 E. R. 628.

11 Hare,  
Knapp v.  
Pink v. P.

L. T. 83. **Mentd. Re Pink.**

**2407.** ——— **& for consideration.]**—An acceptor of a bill of exchange cannot avail himself of a renunciation on the part of the holder of claim upon him, unless it be express & founded upon some consideration.—**PARKER v. LEIGH** (1817), 2 Stark. 228, N. P.

**2408.** ——— **To an action on a promissory note given by deft. to his father, deft. pleaded that he, deft., had just grounds to complain of the distribution that his father had of his property, as his father had admitted, & that it was agreed between them that deft. should cease for ever to make any such complaint, & that in consideration thereof his father would him from liability on the note & the of action in respect thereof, & that deft.'s nent should be accepted in full satisfaction & discharge, & that it was so accepted:—Held**: the plea was bad, as not showing any consideration for the promise by the father.—**WHITE v. BLUETT** (1853), 23 L. J. Ex. 36; 22 L. T. O. 8. 123; 2 W. R. 75; 2 C. L. R. 301.

**2409.** ——— **Receipt in part payment.]** In an action brought to recover the balance due on a bill of exchange deft. claimed that pltf. had, by the terms of a receipt which they had given for a payment made by deft. on account, waived any further rights under the bill:—**Held**: as the receipt spoke of a balance then remaining due from deft., pltf. were entitled in the action to judgment for the balance due.—**DAY v. BATCHELOR** (1885), 1 T. L. R. 489.

**2410.** ——— **Return of bill by holder to drawer.]**—Two bills of exchange, accepted by

defts., & indorsed by the drawer to at maturity, returned as unpaid drawer, whose account with pltf. was debtd the amount of the bills, & a few days afterwards the bills were sent back to pltf. to enable them to sue defts. upon them. In an action on the bills defts. pleaded that pltf.' claim on the bills was discharged by appropriation by of funds in their hands belonging to the before the issue of the writ in the action. Pltf. contended that the sending of the bills to was only an intimation that they him to pay the bills without renouncing their rights against the acceptor, whilst defts. contended that the return of the bill to the drawer was a of the holders' rights

or for drawer

but in their own rights, pltf. having both a right against the drawer, & a collateral right against the acceptors, & the mere sending of the bill to the drawer & taking it back did not alter the rights of the parties.—**COHN & Co. v. WERNER & Co.** (1891), 8 T. L. R. 11.

**2411.** ——— **Must be absolute—May be by parol.]**—**WHATLEY v. THUCKER**, No. 2907, ante.

**2412.** ——— **Statement by holder—That maker need not trouble further about note.]**—The holder of a promissory note told the maker of note that she need not trouble herself further it. The holder also refused the tendered, & again told the maker not o herself about it. The holder, of her papers before her & told one of her exors. not for payment, as the make husband had provided for its payment in his will. The exors. of the deceased holder brought an for the amount of the note, which the resisted, on the ground that the waived & discharged:—**Held**: the were not sufficiently definite, & did not amount to an absolute exoneration or discharge of debt due upon the ), 1 T. L. R. 23.

**That debt should be forgiven.]**—A renunciation in writing of a bill of exchange or promissory note under 1882 Act, s. 62 (1), must be a record of an absolute & unconditional renunciation of the rights on the bill or

A holder of a promissory note when on his deathbed expressed a wish that debt be forgiven, & directed the be for & destroyed, & the forth the nurse at his instance made a as follows: "It is by G.'s [the holder] dying wish that the note for £2,000, money

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( to say whether in it such

to F., be destroyed as soon as found." The memorandum was signed by the nurse, but not by the holder:—*Held*: apart from any question as to whether the renunciation should have borne the signature of the holder, which question the ct. held entirely open, the memorandum did not operate as a renunciation of the note under the above sub-sect., inasmuch as it was competent for the holder to have revoked his wish & orders with respect to the destruction of the note.—*Re*

44 Ch. D. 627;  
L. T. 49; W. R. 617; 6

T. L. R.

Edwards (1896) 2 Ch.

Letter by holder to third person

That consideration "was a gift absolutely." J., being anxious to start his son-in-law in new, visited him & his wife with a form of on demand, & £500 in bank was handed to the

J. stating that it was "to give The son-in-law, in reply to inquiries by wholesale houses, stated to them that the £500 was a gift from J. The son-in-law having an account with a wholesale house, the wrote to him in Mar., 1907, saying that firms had inquired of them whether J. had confirmed the gift, & asking him to get a letter from J. stating that the £500 was free from any liability to J. On Apr. 3, 1907, J. sent a reply to the letter, stating that the £500 "was a gift lutely." J. died on Apr. 15, 1907, & law paid one half-year's interest on the , & becoming aware of the letter of Apr. to pay the ation of the right, which would

(1909), 101 L. T. 27.

2415. — Must be in writing unless delivered Note in maker's possession—Claimed as gift.]

bill by the exors. of the payee of a note the maker prayed payment on the foundation of its loss. It turned out to be in deft.'s possession, who claimed it by gift from The evidence being sufficient to prove allegation, that the note was to him by testator, intending that he should not be sued upon it, the bill was dismissed with costs. — COOKE v. DARWIN (1853), 18 Beav. 60; 23 L. J. Ch. 297; 22 L. T. O. S. 113; 2 W. R. 33; E. R.

2416. — Delivery to devisee of maker.]—

(affirming the decision of KEKEWICH, J.) a parol renunciation by the holder of all rights promissory note, accompanied by a of the note to a devisee of the real estate in whose hands was liable to of the debt, & who had for paid interest on it, did not operate as a for although the word "maker" in 1882 Act,

2417. Effect of—Against principal debtor—Discharge of parties liable on collateral securities.]—A creditor who accepts as collateral security bills or bonds of third parties, afterwards renounces them & discharges the maker, cannot sue his principal debtor without giving credit to the extent of the

CAN.

a bill or the

ss. 62 (1), 89, would probably be held to include the exors. or administrators of the maker, it did not include his devisees.—EDWARDS v. WALTERS, [1896] 2 Ch. 157; 65 L. J. Ch. 557; 74 L. T. 396; 44 W. R. 547; 12 T. L. R. 359; 40 Sol. Jo. 477, C. A.

2417. Effect of—Against acceptor—Agreement by holder not to sue—Whether acceptor discharged.]

—If a holder of a bill of exchange agree not to sue the acceptor, upon his making affidavit that the acceptance is a forgery, & such affidavit be made & sworn, he cannot afterwards bring an action on bill, though the affidavit be false. It is otherwise if the affidavit be not

(1793), Peake, 249, N. P.

2418. — Abandonment by holder of claim upon bill—Accommodation bill.]—A. accepted a bill for the a B., which B.

to C., his creditor, to provide for a bill to become due. C., before A.'s bill became due, returned it to B. as useless, in order that it might be forwarded to A., & abandoned all claim upon the bill:—*Held*: C. could not, by subsequently obtaining possession of the bill, acquire a right of action against A.—CARTWRIGHT v. (1818), 2 Stark. 340, N. P.

2419. — Release of drawer—Whether accommodation acceptor released.]—The holder of bills of exchange, accepted for the accommodation of B., the drawer, after they became due entered into an agreement with B. that, in consideration of B. giving him a freehold mtge. for the bills & other debts, he would deliver up the bills to be cancelled, & give up his claim on all parties. The mtge. security was given. At the time of the agreement the holder knew that the acceptances were acceptances. In an action by holder against the acceptor:—*Held*: the acceptor was discharged, & had a defence on equitable grounds.—EWING v. LANCASTER (1865), 6 B. & S. 571; 6 New Rep. 364; 12 L. T. 632; W. R. 857; 122 E. R. 1306.

in relation to—*Re* Oriental Financial r. Gurney (1871), 7 Ch. App. 145, n. , further, Sect. 12,

2420. — Against maker—Note for antecedent debt—Insolvency of maker—Against whom discharge available.]—After Feb. 1, 1809, a promissory note was given for an antecedent debt:—*Held*: as against the payee, the maker would have been discharged under Insolvent Debtors Act, 1809 (c. 115), but he was not, as against a person to whom the note was subsequently indorsed.—LUCAS v. WINTON (1810), 2 Camp. 443, N. P.

Note to secure instalments— for instalments due—Receipt as for debt costs—Whether note discharged.]—A promissory note for £100, on the face of it payable on was given to the trustee of a building society, to secure certain instalments, fines, The payee having sued upon the note, took a if for the then due, &

in one drawers or indorsers (or under ca. as.,

l. liable in discharged.—HOL. (1863), 2 E. & A.



costs, which were afterwards paid, & he gave a receipt as for debt & costs in the action:—*Held*: he could not maintain another action on the note for instalments which subsequently became due.—*SIDDALL v. RAWCLIFFE* (1833), 1 Cr. & M. 487; 1 Mood. & R. 263; 3 Tyr. 441; 2 L. J. Ex. 237; 140 E. R. 491.

*Annotation*:—*Mond. Orridge v. Sherborne* (1843), 12 L. J. Ex. 313.

**2422.** ——— Note to secure rent—Agreement claim for rent—Whether note dis-  
On the trial of an ejectment in 1825, landlord & tenant, a verdict was taken by consent for *plff.*, it being then agreed that "is not to be called upon for any rent now due." *Deft.* had, with another person, given a promissory note to his landlord, to secure payment of half a year's rent due at Lady Day, 1834:—*Held*: the agreement claim on the

**Release of acceptor by holder—**  
**Rights reserved against other**  
**acceptor to indorsers.]—Held**: a release to the acceptors by the holder of a bill, which had dishonoured & protested, did not discharge the bill,

the acceptors, who,

by

of  
(1875), L. R. 2 Sc. & Div. 456, H. L.

*v. Whitaker*

L. T.

**2424.** ——— Against drawer—Agreement that shall pay holder—Drawer

An ——— between the holder & of a bill, dishonoured for non-payment, that the acceptor shall pay to the holder the amount of the bill, & no more, discharges the drawer, his assignees, he being such agreement.—*DE LA TORRE v.* (1871), 1 Stark. 7, N. P.

—BY

. Note given same day.]—A  
not ——— charge a note given the same day.—*ANON.* (1872), 12 Mod. Rep. 401; 68 E. R.

**W.** ——— Against one of two co-sureties—Note taken up by other co-surety.]—In an action by a second indorser against the maker & prior indorser on a note, the maker suffered judgment by default, & the indorser pleaded that the note was given by the maker to H., to whom the maker was indebted, & indorsed by himself & *plff.* as securities for the debt, & that upon action brought by H. against all the parties thereto *plff.* paid the same, & thereby released all the other parties from their common liability:—*Held*: the facts showed no release.—*WELLOCK v. McGROGAN* (1867), 12 C. P. 544.—*CAN.*

#### PART XIV. SECT. 6.

**2427 I. Release of maker—Note given to partner for money advanced—Mutual release of partnership matters.]—A** promissory note was given by one partner to another for money advanced, & shortly afterwards a mutual release was executed by the partners of all partnership matters. The drawer of

the promissory note then gave security to his partner for the payment of other sums outside the partnership, the promissory note not being included. Accounts passed between the parties for some years without any claim on the promissory note:—*Held*: it had been released by the deed.—*STUART v. STUART* (1856), 5 N. Z. L. R. C. A. 85.—*N.Z.*

**2427 II. Release of acceptors—By holder.]—(1.)** an indorser took up a bill & sued *deft.* one of the partners in the firm of C. & Co., the acceptors. The jury found generally for *plff.*, but found specially that C. had promised to release C. & Co. On rule *alio* to enter a verdict for *deft.* on the grounds that *plff.* had discharged *deft.* from all liability:—*Held*: as *plff.* had promised to release C. & Co., they were by the law merchant thereby released & discharged from all liability.—*CLARK v. MCGILVER* (1847), 4 W. W. & A. B. 159.—*AUS.*

**2. Release of indorser—By holder—Before maturity—Rights of subsequent**

**In an action by**  
against acceptor of a bill of ———, *deft.* *pl.* that before the bill became due, & whilst *plff.* the holder thereof, & before the commencement of the action, *plff.* released the bill, without alleging that the release was after the acceptance:—the plea was bad for not averring that the was after the ac-  
(1840), 2 Man. & G. 1; Drinkwater, 49; Scott, N. R. 273; 10 L. J. C. P. 53; 133 E. R.

**2427. Release of acceptor—By ——— Before**  
**indorsement—Rights of subsequent**  
If the drawer of a bill payable to his ——— it

this is no defence to an action by an in- against the acceptor, unless there be proof that the indorsee knew of the release.—*DOD v. EDWARDS* (1827), 3 C. & P. 602, N. P.

**2428.** ——— Bill not in possession of drawer of subsequent indorsee.]—A bill of change was deposited with ——— security by the who, w ——— in the hands of and the ——— with other matters, the acceptor. ——— the drawer in- sed it to *plff.* ——— was not a release of the bill, except bill ——— at the time of the of the drawer, which it was not, as the bill had been deposited as a security, & it was not shown that the lien had been

(1844), 4 ——— O. R. 139, C. A.

**2429. Accommodation note—Release of**  
**Whether maker ——— A. ——— with-**  
**out**  
**(1.)** by B. as ——— y for money, & the for ——— consideration, without B. from the note & all claim & touching the matters in respect of which promises were made, this does not ideration of the note but still recover against the make notice that the maker made it as surety only, have varied the case.—*CARST* (1814), 5 Taunt. 551; 1 Marsh. 207; 128 E. R. 805.  
*Annotations*:—*Reid. Nichols v. Norris* (1831), 3 B. & Ad. 41; *Re Bentley, Ex p. Vere* (1835), 4 Deac. & Ch. 395.

**2430. Accommodation bill—Release of drawer**  
**—Whether acceptor released.] An**  
an accommodation bill, without notice that

*indorser.*—The holder of a note may discharge the indorser by a general release before the note is due, & such release will be a good defence to action by a subsequent indorser. *MILTON v. CANNAN* (1869), 1 Hen 491.—*CAN.*

**2430 I. Accommodation note—Release of paper—Whether maker discharged.]—** To an action on a promissory note made by *deft.* in favour of F., or order, & by him indorsed to *plff.*, *deft.* pleaded that he made & gave the note to F. for his accommodation, & that there never was any value or consideration for the making or payment of the said note; that *plff.* received the note with full knowledge that the note was so given without value & for the accommodation of the said F., & that *plff.*, while they were holders, discharged the said F. from all liability on said notes:—*Held*: the plea was no answer to the action.—*HARRIS v. NEW BRUNSWICK v. BROWN* (1879), 19 N. B. R. 106.—*CAN.*

**2430 L. Accommodation bill—Release**

**5.—By release. Sect. 6.]**

It is one of that description, may  
notice subsequently acquired,  
without releasing the acceptor  
(1854), 5 De G. M. & G.  
1, L. J.

the drawer,  
K, Ex p.  
43 E. R.

radford

a bill  
for the accommodation of H., the drawer,  
who indorsed it over as security for a debt, &  
afterwards became bkpt. The indorser entered  
into an agreement with the assignee, for pur-  
chasing part of bkpt.'s property, & for the arrange-  
ment of some claims which he, the indorsee, had  
upon the estate, & he afterwards gave them a  
release of all demands, no mention being made,  
during the transaction, of the bill, which had been  
dishonoured. He knew at the time of the agree-  
ment, but not when he took the bill, that it was

for accommodation:—*Held*: notwith-  
the above release, the acceptor was still  
at the suit of the indorsee. — *HARRISON v.*  
*LD* (1832), 3 B. & Ad. 30; 110 E. R. 14.

K. & B. 50, n.

**2432. Withdrawal of execution—For which note  
given as consideration—Whether maker dis-  
charged.]—**Deft. having given plff. a promissory  
note for £10, in consideration that he would with-  
an execution upon promises of deft., plff.

a general release of all suits, which, after  
iting the agreement to withdraw the execution,  
etc., proceeded as follows: "Witnesseth, that in  
pursuance of the agreement & in consideration of  
the sum of £10 being now so paid, as hereinbefore  
is mentioned, etc." In an action on the promissory  
note, which had been dishonoured:—*Held*:

there was no bar to the suit. — *LAMPON v.*  
*J.* 5 B. & Ald. 600; 100 E. R. 1312; *sub*  
*v. CONK*, 1 Dow. & Ry. K. B. 211.

*Baker v. Dewey* (1893), 1 B. &  
*v. Summers* (1898), 2 M. & J. 407.

**Assignment by indorsee of debt due from  
prior indorser—Whether indorser discharged.]—**  
The production of a Scotch deed of assignment, in  
which the holders of a bill, for 2s. 6d. in the pound,

lawful assignors, & assigns, in & to  
sums assigned, as far as the claim of the  
prior, against one indorser specified, but  
to the holders, their heirs & assigns, all  
right of recovering against the acceptor, drawer,  
indorsers, the balance of

does not  
of the bill accepted & received of  
the indorser a certain sum, in full satisfaction &  
of the bill, without the knowledge of

deft., & thereby discharge the indorser from  
his liability.—*HOULDITCH v. CAUTY* (1838), 4  
Bing. N. C. 411; 1 Arn. 162; 6 Scott, 209; 7  
O. P. 217; 132 E. R. 845.

—*Consol.* *v. Sharwood* (1849), 2 Gal. &  
*Montd.* *v. Price* (1839), 8 L. J. Q. B.

**2434. Provision not to sue on note.]—**A., the  
purser of a mine, in order to carry it on raised  
money by indorsing two promissory notes made in  
his favour by seven out of nine of the shareholders,  
which the other two shareholders had refused to  
sign from a reluctance to incur further responsi-  
bility, & applied the money so raised in paying the  
workmen. Some time afterwards, at a meeting  
of the shareholders & creditors, an assignment of  
the mine, in order to sell it & pay the debts, was  
resolved upon, & A. then claimed to be admitted  
as a creditor "for money which he had raised on  
notes of hand to pay the workmen," which were  
the above notes & interest. A deed of assignment  
was afterwards executed, to which all the ad-  
venturers were parties of the first part, & several  
persons whose names were thereunto subscribed,  
"as creditors of the several other persons therein-  
before described of the first part, as adventurers  
for supplies to & debts incurred by them for or  
in respect of the same mine, to the amounts set  
opposite their respective names," of the second  
part. The deed, after reciting that the share-  
holders had in the prosecution of the mine in-  
curred debts thereon, with the persons, parties  
thereto of the second part, contained a conveyance  
in trust for those creditors, & a provision that no  
action should be brought by any of the persons,  
parties thereto of the second part, against all, any,  
or either of the persons, parties thereto of the first  
part, for the recovery of any debt or debts due or  
owing upon the mine, or in anywise relative  
thereto, & that if any such action was brought, the  
deed might be pleaded as a release. A. executed  
the deed, & the amount of the promissory notes &  
interest was placed opposite his name. In an  
action brought on one of the notes against the  
seven shareholders by A., they pleaded the deed,  
averring that he signed & executed it as a creditor  
of the several parties to it of the first part, in  
respect of the causes of action sued on, those causes  
having accrued in respect of debts incurred by the  
parties thereto of the first part, in respect of the  
mine:—*Held*: the claim in respect of the money  
raised by means of it & lent, was barred.—*LANYON*  
*v. DAVEY* (1843), 11 M. & W. 218; 12 L. J. Ex.  
200; 152 E. R.

**2435. Amount of debt filled in after execution—  
Erroneously—& without authority.]—**To action  
against the acceptor of a bill of exchange for  
£337, deft. pleaded a release by deed. Plff. replied,  
*est factum*, & that a blank was left in the deed

aware of

the or  
11 C. P.

**a. Admissibility of evidence.]—**An  
agreement to release the maker of a  
negotiable promissory note, made after  
signing & before maturity, may be  
proved by parol evidence.—*GALT v.*  
*CHURCHMAN* (1864), 8 L. C. J. 341; 13  
R. J. R. Q. 243.—*CAN.*

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on  
given by deft. to plff.  
on a release given to him by  
the same date as the note, &  
one of the considerations mentioned in  
the release was a sum of \$35. The  
note had been given for money in deft.'s  
hands belonging to testator, after  
allowing deft. a certain sum for collect-  
ing:—*Held*: the circumstances created  
a latent ambiguity in the release, &  
evidence was admissible to show  
whether the note was intended to be  
released or not.—*CALDWELL v. KEITH*  
(1863), 5 All.



for plff.'s debt, which after execution of the  
 1 up err  
 evidence after the  
 became indebted to in £142  
 for goods sold. Afterwards plff. the  
 which recited that debt, was indebted to  
 persons thereto, in the sums  
 to their names in the schedule, & in  
 of a guarantee of 10s. in the pound by a third  
 party, the creditors, parties thereto, released the  
 debts then owing to them. Plff. executed the  
 deed, but a blank was left opposite to his name,  
 which afterwards, without his authority, was  
 filled up with the sum of £337. The jury found  
 that the debt which the parties meant to be re-  
 leased was the balance, after deducting the £142  
 from the £337;—*Held*: plff. was entitled to a  
 verdict on the issues on both replications.—  
 1856), 6 E. & B. 795;  
 26 B. N. S. 1020; 4 W. R.

to joint & several &  
 see

### 6.—BY CANCELLATION.

1882 Act, s. 63.

**2436. Must be apparent—Bona fide holder for  
 Circulation without authority.**—Where  
 maker of a bill sent does some-  
 t. *animo cancellandi*, but so imperfectly that his  
 intention is not manifest on the face of the instru-  
 it is afterwards put in circulation, he is  
 to a bona fide holder for value, though  
 instrument be put in circulation without his  
 authority.

the acceptor of an accommodation bill  
 of exchange intrusted it to a drawer for the pur-  
 pose of getting it cashed, & on the latter  
 failing to do so, tore it in pieces & threw away the  
 pieces in the street, but the drawer picked them  
 up & put them in his pocket, saying that they would  
 be safer there, & afterwards pasted them together,  
 & wrongfully negotiated the bill, there being  
 nothing in the appearance of the bill to excite  
 suspicion:—*Held*: the acceptor was liable on the  
 bill to a holder for value without notice.—*INGHAM*  
*v. PRIMROSE* (1859), 7 C. R. N. S. 82; 28 L. J. C. P.  
 294; 5 Jur. N. S. 710; 141 E. R. 745.

4 C. P.  
*Ex pte*  
 L. O. R. Smith v. 4), 61  
 73 2 K. H.  
 2 K. B.  
 A  
 r. CHY  
 A. C. 514  
*Montd. Ex*  
 North British  
 L. C.  
 H. & Co. 772  
 (1873), 21 W. R.  
 L. T. 61.

**2437. By drawer—To whom bill sent for  
 —R., being indebted to plffs., gave  
 bill of exchange, drawn by R. & accepted by deft.,  
 but made payable to R.'s order. The bill was not**

### PART XIV. SECT.

agreement to

agree a for the amount due

by R., by —*Held*: a suit by plffs.  
 to the amount of the bill  
 could not be —*ENDOR v. HUMFORD* (1808),  
 31 L. J. Ch. 808; 7 L. T. 88; 9  
 8; 10 W. R. 812; 54 E. R. 1133.  
 r. Forster (1863), 14 C. B. N. S.

**By agent to collect bill—Cancellation before  
 conditional payment accepted by principal—Liability  
 of agent.**—*See AGENCY*, Vol. I., No. 783; *BANKERS*  
*& BANKING*, Vol. III., No. 488.

**2438. Acceptances cancelled by acceptor—Subse-  
 quent indorsements of new seconds—Whether right  
 conferred against acceptor.**—*H.*,  
 residing at Trieste, in Nov., 1841,  
 defts., merchants residing in Liverpool,  
 of bills in two parts, & requested them to

to be held by them at the of  
 the holders of the seconds. The of  
 at Trieste &  
 the foot to D in  
 London, with G. & Co. D. &  
 memorandum of  
 to G. & Co., to be held at the  
 of the holders of the seconds, & by  
 S informed S. of

they had done. At the time the firsts were  
 remitted to D. & Co. S. had sent the  
 P. & Co. of Paris, for discount, but  
 to discount them, & they were received back by  
 S. on Dec. 8 & 13, & then cancelled by him. On  
 4 S. wrote to G. & Co. requesting them to  
 D. & Co. all the firsts so drawn by him  
 upon them & handed to G. & Co. as  
 tioned. He also wrote to D. & Co. to  
 them to instruct G. & Co. to return all the firsts  
 which in their On

to that he had  
 to G. & Co., & he requested D. &  
 hands of G. & Co  
 Co., on  
 held as  
 bills  
 D. & Co.  
 acceptances. On Dec. 18 D. & Co., after  
 7,  
 on of  
 G. & Co. to us, were immediately  
 & it would do to re-issue them

to & this, & requesting them to  
 of us when they  
 to them." On 21, 22, & 23  
 S. what conds to  
 from whom plff.  
 for value in due

of them that the firsts had In an  
 by the holders D. & Co.: t;  
 by the of  
 upon the

D. & r. DENNISTON

not. To say that a negotiable in-  
 strument can only be put an end to  
 by indorsement is obviously incorrect.  
 —*FRANCIS DUTT v. SUNDIA BALA*  
*Dutt* (1905), 12 C. W. N. 1162.—*IND.*





have the money repaid. The notice was in time for the post, so that notice of the could be sent the same day to the indorsers: *Held*: the rights of the parties were not altered by the erasure of the indorsements, that having been done by mistake, & being capable of explanation by evidence.—*WILKINSON v. JOHNSON* (1824), 3 B. & C. 428; 5 Dow. & Ry. K. B. 403; 3 L. J. O. S. K. B. 58; 107 E. R. 792.

*Mentd.* London & River Plate Bank v. Bank of Liverpool, [1896] 1 Q. R. 7.

**2444. — By bank where acceptance payable—**  
**Bill drawn by foreigner abroad—Effect of decision of foreign court discharging parties to bill.**—Deft., in discharge of a debt to plff., indorsed bills to him, which had been drawn & indorsed to deft. by parties in France, but were accepted by a person in England, & payable at a banker's there. Plff. indorsed them over. On their being presented for payment, the banker's clerk inadvertently cancelled the acceptances, but immediately wrote opposite to them, "cancelled by mistake," but the bills were not paid, there being no effects. The holders then presented them at a house to which they were addressed in case of need, but that house refused payment in consequence of the cancelling; they would otherwise have honoured them. A re-acceptance was obtained from the acceptor, but he did not pay the bills. Plff. then took them up & returned them, regularly protested, to deft., who applied to the prior indorsers for payment, but they refused. Deft., who resided abroad, cited the drawers, the intermediate indorsers, & plff., before the Tribunal of Commerce at Lyons, for the purpose of obtaining a guarantee for himself against liability on the bills. That ct. adjudged him & the other parties, except plff., discharged from liability, & decreed that the bills should remain to plff.'s debit. Plff. then the cause to a Ct. of Appeal in

that the cancelling of the acceptances o

acceptor, & was equivalent to a delay granted him by the holders, with whom plff. was identified, & that the other parties to the bills were discharged:—*Held*: the French courts had mistaken the law of England as to the effect of the

was still liable at for the debt in  
of which the bills were notwithstanding  
the decree.—*NOVELLI*  
R. d. 757; 9 L. J. O. S. K. B. 100 E. R.  
1826.

*Warwick v.*  
*Woodfall* (1839), 6 Jur. N.  
*Curie* (1870), L. R. 4 H. L. 416.  
*Drace* (1867), 23 Beav. 145; *Curie v.*  
*C. B. N. B.* 403; *Simpson v. Fogo* (1863), 1  
*Horn. & M.* 195; *Godard v. Gray* (1870), L. R. 6 Q. B. 139.

**Notice afterwards given by**  
**acceptor not to pay bill.**—Plff. was the holder of a foreign bill of exchange, which the acceptor made payable at deft.'s banking house in The bill was delivered to deft., by plff.'s on the morning of the day it became due, acting throughout according to the practice of bankers, intending to pay the bill, & in

, but in the course of received orders from the acceptor not to wrote upon the bill the words, "cancelled by orders not to pay"; & in that state it the same afternoon to plff.'s bankers: (1) there was a of the acceptance; (2) it error & mistake; (3) deft. had taken due care to prevent the acceptance from being (4) they were not liable to pay the amount of bill; (5) the only duty imposed on them was due care of the bill, & if they did pay it, to return it uncanceled, unless by mistake, & in that case to indicate that it had

5 Man. & G. 340; 6 Scott, N. R. 1; 12 L. J. C. 113; 134 E. R. 505.

*Annotations: Mentd.* Pollard v. Bank of L. R. 6 Q. B. 623; *Prince v. Cas.*

**By bank of maker.**—The mere of the makers of a discharge on note, & before note is sent

error," cannot be to charge a bank with the receipt of the *PRINCE v.*  
*BANK CORP.* (1878), 3 App. Cas. 325; 47 L. J. P. 42; 38 L. T. 41; 26 W. R. 543, P. C.  
of A. r.

in  
as cancelled.—*MAHIBUTU PILLAI v. KRISHNANAMI CHETTI* (1892), 1 L. R. 11 Mad. 197.—*IND.*

of a The N. in  
by firm at for  
tion to the London. The was  
in consequence of in  
a returned to the any reservation." The  
After June 9 Bank refused to accept the draft as  
the bank-agent of Bank at G. they had no authority from the holders  
wrote to the N. enclosing a to accede to the condition attached.  
letter from the acceptor, of the same The holders then raised an action  
date, stating that they would pay against the acceptors for payment of  
protest & remitting charges on con- the bill, & defendants pleaded that the  
dition they were held free of further bill was cancelled:—*Held*: the G.  
responsibility. No answer was re- bank-agent had acted either in error  
ceived to this letter. On June 12 the or without authority, & the cancellation  
bank-agent took payment of the bill was inoperative.—*DOMINION BANK v.*  
from the acceptor, & the bill was *ANDERSON & Co.* (1888), 25 Ec. L. R.  
cancelled & given up. An hour after 324.—*SCOT.*  
wards the acceptor handed to the  
bank-agent a letter in these terms:  
"Confirming our former respects we  
hand you payment of this bill on the  
distinct understanding that we are  
freed from all responsibility, for  
interest, expenses, etc." This letter  
was attached by the bank-agent to the  
draft he had taken in payment, &

from his own custody, with deft.'s indorsement thereon cancelled, not as if by any accident, but in the most unequivocal manner, some explanation must be given to the jury for rejecting the inference that the note had been satisfied by deft. whose name is then cancelled.—*Pearl v. KINGSMILL* (1859), 1 U. C. R. 364.—*CAN.*

**b. Of indorsement on original note**  
**—On renewal of note.**—The bearer of a note to order, on accepting a renewal note from the maker, cancelled an indorsement on the original note. The indorser objected was not a party to & was never asked to ratify the transaction:—*Held*: he  
*HANT v. BANK OF BARRON NORTH AMERICA* (1913), Q. R. 23  
*CAN.*

372 **BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE**

**Sect. 6.—By cancellation. Sect. 7: Sub-sect. 1.]**

App. Cas. 215; *Fielding v. Corry*, (1898) B. 768; *R. v. Lovell*, [1913] A. C. 212; *Sinclair v.* (1914) A. C. 398.

pp. 229, 230.

**2447. Note burnt by payee on** -----  
A father lent a sum of money to his son to enable him to ----- in trade, & took his promissory note for it, & afterwards persuaded his son to continue the trade against his inclination, whereby the son ----- great losses. The father on his death-bed ----- the promissory note to be burnt, & died -----:—*Held*: the burning of the note ----- ed, in equity, to a release of the debt, & the sum which remained due upon it was an advancement to the son. —(*GILBERT v.* (1825), 2 Sim. & St. 254; 3 L. J. O. S. Ch. 57 E. R. 343.

*Annotations*: —*Consd.* *Cross v. Spragg* (1849), 6 Haro. *Mentd.* *Flower v. Marten* (1837), 6 L. J. Ch. 167; *Knapp v. Burnaby* (1869), 2 L. T. 83; *Lampus v. Arnold* (1884), 53 L. J. Q. B. 415; *Re Pink, Pink v. Pink*, [1912] 1 Ch. 495.

**2448. Note torn with part missing.]—** *HAWKES v. HAWKES* (1832), Chitty on Bills of Exchange, 11th ed., p. 101.

**SECT. 7. —BY ALTERATION.**

**1. —WHAT ALTERATIONS ARE**

82 Act, s. 64 (1) (2).

**2449. Date—Time of payment accelerated**  
**Subsequent alteration back to original date.**  
A bill was payable Jan. 1, & the person to whom it ----- it to pay on Mar. 1, with ----- which ----- servant returned to his master, who, ----- the enlarged acceptance, struck out Mar. 1, & put in Jan. 1, & at that time sent the bill for payment, which the acceptor refused, ----- out Jan. 1 &

inserted Mar. 1 again. In an action brought on the bill;—*Held*: the alterations did not destroy the bill.—*PRICE v. SHUTE* (1681), Beaw. pl. 222; 2 Molloy de jure Maritimo et Navali, c. 10, s. 28, in *MASTER v. MILLER* (1791), 4 Term Rep.

—*Distd.* *Master v. Miller* (1791), 4 Term Rep. 320. *Consd.* *Paton v. Winter* (1809), 1 -----

**2450. —** -----An alteration of the date of a bill of exchange, by which the day of payment would be brought forward, vitiates the bill, & no action can be maintained upon it after such alteration, though in the hands of an innocent indorsee for a valuable consideration.—*MASTER v. MILLER* (1793), 2 Hy. Bl. 141; 1 Anst. 225; 126 E. R. 471, Ex. Ch.; *affg.* (1791), 1 Term Rep. 320.

—*Folld.* *Knill v. Williams* (1809), 10 East, 431. *Appld.* *Burchfield v. Moore* (1854), 3 E. & B. 683. *Consd.* *Aldous v. Cornwell* (1868), L. R. 3 Q. B. 573; *Suffell v. Bank of England* (1881), 7 Q. B. D. 270. *Appld.* *Suffell v. Bank of England* (1882), 9 Q. B. D. 555. *Reid.* *Paton v. Winter* (1809), 1 Taunt. 420; *Bathe v. Taylor* (1812), 15 East, 412; *Powell v. Divett* (1812), 15 East, 29; *r. Cooper* (1843), 11 M. & W. 778; *Parry v.* (1843), 13 M. & W. 778; *Gardner v. Walsh* (1856), 5 E. & B. 83; *Fazakerly v. McKnight & Abbinett* (1856), 2 Jur. N. S. 1020; *Hirschman v. Budd* (1873), L. R. 8 Exch. 171. *Mentd.* *Shaw v. Jakeman* (1803), 4 East, 201; *Sanderson v. Symonds* (1819), 1 Brod. & Bing. 426; *Re Jernyn, Ex p. Elliott* (1837), 2 Deac. 179; *Saunders v. Smith* (1838), 7 L. J. Ch. 227; *Agricultural Cattle Insce. v. Fitzgerald* (1851), 16 Q. B. 432; *Balfour v. Sea Fire Life Assee.* (1857), 3 C. B. N. S. 300; *Re North British Australasian Co., Ex p. Swan* (1859), 7 C. B. N. S. 400; *Noble v. Ward* (1867), L. R. 2 Exch. 135; *Re Cambrian Mining Co.* (1882), 48 L. T. 414; *Bradlaugh v. Newdegate* (1883), 11 Q. B. D. 1; *Re Goodbody & Balfour, Williamson* (1899), 82 L. T. 484; *Re Salomon & Nauderus* (1899), 81 L. T. 325; *Bradford Corpn. v. Ferrand*, [1902] 2 Ch. 655; *Fitzroy v. Cave* (1905), 93 L. T. 499; *Holden v. Thompson*, [1907] 2 K. B. 489.

**2451. — Time of payment postponed.]—**  
A bill of exchange, accepted for the accommodation of the drawer, bore date Mar. 10. The drawer on failing to negotiate it, altered the date to Mar. 16 & then indorsed it:—*Held*: the alteration vitiated the bill.—*CALVERT v. ROBERTS* (1813), 3 Camp. 343, N. P.

**PART XIV. SECT. 7, SUB-SECT. 1.**

**1. In general.]—An alteration** ----- **o. Statutory definition —** ----- **In.** ----- **E. C.**  
to ----- Act, 1890, s. 65 (2), of ----- **note by the holder, by**  
----- material alterations is ----- **the figure 1 before the figure 4 in the**  
**re.—Sims v. ANDERSON** ----- **date, after it had become due,**  
**V. L. R. 348.—AUS.** ----- **the note, & the amount could not**  
----- **either the makers or**  
----- **—CAN.**  
----- **III.**  
----- **of a promissory note, substituting**  
----- **the date it bore a later date**  
----- **to the maker, an important**  
----- **the effect of freeing him**  
----- **to pay the**  
----- **v. HAWKES** ----- **19 R. L. O. S.**  
----- **CAN.**  
----- **of the date of**  
----- **interest, to a later**  
----- **it**  
----- **by**  
----- **4 A. R.**  
----- **Of** ----- **When a**  
----- **bill** ----- **to**  
----- **& "**  
----- **to**  
----- **of all**  
----- **N.**  
----- **for** ----- **in any**  
----- **from liability on the in-**  
----- **UNTELE (1894),**  
----- **8 E. C. 204.**  
----- **C., the indorser, as**  
----- **June 1, 1847.**  
----- **Nov. 1**  
----- **& "**  
----- **to**  
----- **bill**  
----- **of all**  
----- **N.**  
----- **for** ----- **in any**  
----- **from liability on the in-**  
----- **UNTELE (1894),**  
----- **8 E. C. 204.**



delivered by the drawer to the payee, its date is altered by an agreement between the payee & the drawee before acceptance, it is void as against all the parties.

When drawn on July 5 [the bill] corresponded with the intentions both of drawer & payee. When the date was altered [to July 10] a new bill was drawn (LORD ELLENBOROUGH, C.J.).—WALTON v. HARRINGS (1816), 4 Camp. 223; 1 Stark. 215, N. P.; *subsequent proceedings*, 2 Chit. 121.

2453. ———.—The alteration of a bill of exchange by the drawee after it has been drawn & indorsed, & before it is accepted,

of payment from the 5th to the 15th day of the month, renders the bill  
v. LUNTLEY (1815), 4 Camp. 179, N. P.

2454. ———.—A was, without authority, altered by the holder, who inserted the figure 6, so as to change the date to Mar. 26 :—*Held* : this was a material alteration which invalidated the cheque.—VANCE v. LOWTHER (1876), 1 Ex. D. 170; 45 L. J. Q. B. 200; 34 L. T. 286; 24 W. R. 372; *sub nom.* LOWTHER v. 40 J. P. 232.

Alteration of cheques, *see*,  
BANKING, Vol. III., pp. 230-235.

2455. ———.—Plff. was the indorsee of bill. Deft. accepted the bill, which was July 17, 1888, but which was afterwards altered in date to July 27. The alteration was made before issue of the bill, & without the assent of deft. : the bill was materially altered without

of the  
upon it.—ESUEL v.  
J. P. 535; 5 T. L. R. 444.

2456. ———.—O  
WALKER, No. 2485,

2457. *Sum payable—Amount decreased.*—A declaration in *assumpsit* alleged that plff., in France, drew a bill, for a sum named, on deft., which deft. accepted. Issues were joined, on a plea of non-acceptance, & on a traverse of a that plff., after the acceptance, & consent, changed the purport of the bill by the sum for which it was drawn. The bill been originally drawn in Paris for a larger than that named, but deft. had accepted for a smaller sum. In the body of the bill the sum originally named had been altered to that for which deft. had accepted, but it did not by whom, or at what time or place, the had been made. No stamp was on the bill :—*Held* : plff. was entitled to a verdict on both issues, the acceptance by deft. furnishing evidence that he assented to the insertion of the smaller sum, & it not being shown that the alteration, even if by the parties contrary to their was made in England, so as to equitate.—HAMBLIN v. BRUCK (1846), 9 Q. B. 306; 15 L. J. Q. B. 343; 10 Jur. 1004; 115 E. R. 1290; 7 L. T. O. N. 250.

2458. ———.—Rate of interest

a party deposited money with a banker, a note properly stamped, pro  
pay " with interest at

2457

BIN v. TURNBULL (1850), 12 (Cl. of Sess.) 1123.—SCOT.

2457 II. ———.—Bill  
(blank).—A note made out for figures at the top & not to which fig the "250," &

or indorsed, & avoids it.  
COLUMBIA LAND  
AGENCY LTD. v. I  
H. C. R. 82.—CAN.

W. ———.—A

form of

with

27 R. R.

Plff. sued deft. for the amount of a ft. of June 2, 1915, to the order of N.

It not by by to

CAN.

that the sum had from \$250 to \$1

It

left filled up by N.—*Held* bond *fid* holder for value & the tion in question not being in but only in the

KELLY

28

551.—CAN.

the

B. C. —CAN.

2457 III. ———.—  
to be

resp. &

with R.

R.

—The

It ha

at blank bill being in figures of the

the

R. 438.—CAN.

as  
is  
in

3 W. W. R. 1044; 10  
38 D. L. R. 341.

R. 393

the rate of

in

was

& in

# 374 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

## 7. — By alteration: Sub-sect. 1.]

of 3 per cent. per annum to the day of acceptance,"  
It was proved that the money was in fact  
upon terms specified in the note,

that interest at 3 per cent. had for some time been  
paid, but that a subsequent alteration, at the  
request of the banker, was made in the note, by  
striking out the word "three" & writing over  
"two & a half":—*Held*: the note so altered was  
void by the alteration.—*SUTTON v. TOOMER*  
(1827), 7 B. & C. 416; 1 Man. & Ry. K. B. 125;  
6 L. J. O. S. K. B. 49; 108 E. R. 778.

*v. Norton* (1812), 9 M. & W.  
*Ashling v. Boon*, (1891) 1 Ch. 668.

**Increased.**—An alteration of a  
promissory note, made payable "with lawful  
interest" by adding the following memorandum  
in the corner: "Interest to be paid at 6 per cent.,"  
is a material alteration, & being made without  
the consent of one of the makers of the note,  
vitiates it.—*WARRINGTON v. EARLY* (1853), 2  
E. & B. 763; 23 L. J. Q. B. 47; 22 L. T. O. S.  
133; 18 Jur. 12; 2 W. R. 78; 118 E. R. 953;  
*sub nom. WARRINGTON v. EARLY*, 2 C. L. R. 3

*Reid*, Bank of Hindustan, China & Japan v.  
67, 36 L. J. C. P. 241.

## 2460. Time of payment — "Date" for "sight."

*Assumpsit* by indorsee against acceptor of a bill  
of exchange. After the acceptance, the word  
"date" had been inserted in the place of "sight,"  
in which form it had originally been drawn. The  
acceptor being thereby discharged, *plff.* wanted  
to go on the common counts, & offered in  
another bill, drawn by the same drawer on  
for the same amount, but not accepted:—*Held*:  
that could not be done, nor could *plff.* recover at  
all against the acceptor, for he was liable only by  
virtue of the instrument, & as that was vitiated,  
his liability was at an end.—*LONG v. MOORE* (1790),  
5 P.

## 2461. — Addition of "on demand" No time of payment expressed on bill.]—A

note expressed no time for payment, & while it  
was in the possession of the payee, the words "on  
demand" were added without the assent of the  
maker. In an action by payee against maker:—  
*Held*: as the alteration only expressed the effect  
of the note as it originally stood, & was immaterial,  
it did not affect the validity of the instrument.—  
*ALDOUS v. CORNWELL* (1868), 9 B. & S. 607;  
L. R. 3 Q. B. 573; 37 L. J. Q. B. 201; 16 W. R.  
1045.

*Suffell v. Bank of England* (1881), 7  
Q. B. D.  
51 L. J. Q. B. 401. *Reid*, *Crediton v. Exeter*, (1888),  
2 Ch. 455. *Montd.* *Goodbody & Balfour, Williamson*  
82 L. T. 484.

**Alteration of date.**—See Nos. 2449–2456,

**2462. Place of payment—Altered from B. & Co.  
to E. & Co.]—**Where the drawer of a bill of ex-  
change, accepted payment at B. & Co.'s, after  
keeping it three or four years indorsed it to *plff.*,  
erasing the name of B. & Co., & substituting E. &  
Co. without the knowledge of the acceptor, B. &  
Co. having failed since the acceptance:—*Held*:  
*plff.* could not recover against the acceptor.—  
*TIDMARSH v. GROVER* (1813), 1 M. & S. 735; 105  
E. R. 274.

—*Distd.* *Walter v. Cubley* (1833), 4 Tyr. 87.

## 2463. — Addition of—Bill accepted generally.]

—A bill of exchange having been accepted  
generally, the drawer, without the consent of  
the acceptor, added the words, "payable at  
Mr. B.'s, Chiswell Street":—*Held*: that was a  
material alteration, & the acceptor was thereby  
discharged.—*COWIE v. HALSALL* (1821), 4 B. & Ald.  
107; 106 E. R. 910.

—*Distd.* *Walter v. Cooley* (1833), 3 L. J. Ex. 2.  
*Deabrow v. Weatherley* (1834), 6 C. & P.

**2464. — — — — —.]—**The drawer of a bill  
of exchange, accepted generally, added the words,  
"payable at R. & Co., bankers, London," without  
the knowledge of the acceptor, & then indorsed it

It un- on the C. & the  
I. L. R. B. & C. initiated the change. The bank & the  
of a rate of maker's space were filled up. The  
altered interest CHURCH & STONER were made  
1171: O. R. 573; 4 O. W. in corner of a up by A. & K.:—*Held*: *plff.*  
I. Time payment—Period of to read "this not  
An alteration in a for the memorandum  
of it VOYKOBONIK is not part of the  
it I. L. R. 1 as holder in tion of  
A. to the of A. & K., & by not  
to A. & B. in 1 w it in- Printed for L. R. 348.  
st. them When in at for  
A. the the of d. — Struck  
placed on each of the 12



24781. Indorsement.—Of one of the accommodation indorsers as co-sureties struck out.—(Further order discharged).—T. made a promissory note with the payee's name in blank. He then

to

thus: to the order of S., at the rate of  
25 francs 75 for £1. value

0,437 francs ou centimes, en rente. — *Held*: such a material alteration of the rights & liabilities of the parties to the contract as avoided the bill in the hands of plff.—*HINSCHFIELD v. SMITH* (1866), L. R. 1 C. P. 340; *Har. & Ruth*, 284; 35 L. J. C. P. 141; T. 886; 12 Jur. N. S. 523; 14 W. R. 455.

—*Held*. *Bradlaugh v. Lee* (1868), L. R. 3 Q. B. 381; *Abbott* (1873), 26 L. T. 2; *Overmann* (1875), L. R. 10 Q. B. 525; *Horne v. Houquette* (1878), 3 Q. B. D. 514.

**2474. Name of drawers.**—From A. B. & Co. to A. & B.—To correspond with acceptance.]—If a bill is addressed to "A. & B." by the name of "A. B. & Co.," & they accept it by the name of A. & B., & the address of the bill is afterwards altered to "A. & B." this is an immaterial alteration, & does not discharge the acceptor.—*FANQUHAR v. SOUTHEY* (1826), *Mood. & M.* 14, N. P.

**2475. Name of payee.**—Note payable to company — Addition of "Ltd." after company's name.]—A promissory note was made payable to the

B. & debt. to  
last of the two.  
Plff. having by T. to

B. : T. that  
it back to with B.'s  
out, of S.  
name that of  
the note,

own or know of,  
Deft. did not consent if B.'s

T. N. S. W. S. C. R. ALL  
AUB.

In an action on a  
signed by deft. to the  
it appeared that the note  
& transferred first to  
for collection; the  
was

(1918), Q. R. 33 S. C.  
16 D. L. R. 143.

h. who, in  
to from  
name

n of

his

the words "as

T. P. D.

that bill

out the authority of the makers:  
the alteration avoided the

6 N. J. R. N.Z.  
o. marked on back of  
bill—

In an action by the indorsee of a bill  
against the acceptor, who received the  
that before the bill was indorsed  
certain advances had been made to  
the drawer on the credit of the bill  
& marked on the back of the bill &  
that when deft. paid the drawer the  
full sum & got the indorsement there

to the  
of On a  
of a by the acceptor,  
as a material part of  
had been vitiated &  
no action could be founded on  
the bill:—*Held*: the receipts were  
from the

that  
made not in extinction of the bill  
but as value advanced; grounds of  
repelled.—*Low v.*  
(Ct. of 399.

by  
of bill payable  
drawer's order, when the bill was  
offered in evidence, it appeared that a  
line had been drawn through the  
drawer's name with a pen. No  
evidence was given to explain it, &  
on presentment for payment  
did not deny his liability:—*Held*:  
the mark through the drawer's name  
did not amount to an alteration of the  
bill.—*ISAACS v. PROCTOR* (1899), 29  
N. H. R. 420.—*CAN.*

**2474 II.** — *Bill delivered in blank*  
—*Substitution of fresh drawer.*—A bill  
having been granted blank in the  
drawer's name, & thereafter discounted  
with a bank agent, the agent filled it  
up with his own name as drawer, &  
indorsed it to the bank; on the bank  
reindorsing it for the purpose of his  
operating payment, the agent deleted  
his own name, & caused the party to  
whom it was originally granted to sign  
as drawer, & also as first indorser:—  
an action at the instance of  
against the acceptor, that

note, inserted the word "Ltd." on the face  
the note & indorsed it to plffs., who were  
in due course whether the insertion of the  
word "Ltd." on the face of the note was a material  
alteration.—*BANK OF MONTREAL v. EXHIBIT &*  
*Co.*, (1906), 22 T. L. R. 722; 11  
*Com. Cas.* 250.

**2476.** — *Filling in blank.*—If an accommo-  
dation bill be drawn payable to blank or order  
&, after acceptance, the blank is filled up, the bill  
is not thereby vitiated.—*ATWOOD v. GRIFFIN*  
1, 2 C. & P. 368; *sub nom.* *ATTWOOD v.*  
*IN, Ry. & M.* 425, N. P.

—*Held*. *Harvey v. Cane* (1876), 34 L. T. 64.

**2477. Name of acceptor.**—Addition of "P. & Co." ]  
—After a bill of exchange had been accepted by deft.,  
the words "P. & Co." were written under deft.'s  
name by the drawer, without his knowledge or  
assent, plff., indorsee, having refused to take the  
bill unless those words were added:—*Held*: as  
the addition of the words did not alter the responsi-  
bility of the acceptor, he was still liable, but if

bank could not recover.  
*TRUSTEES v. SCOTT* (1831), 9 Sh.  
(Ct. of Sess.) 574.—*SCOT.*

**P. Name of joint drawer struck**  
*out.*—A. desiring an advance of money  
applied to certain parties who con-  
sented to draw a bill on him which they  
afterwards indorsed & put into his  
hands that he might discount &  
raise money on it. A's brother  
afterwards agreed to become an in-  
dorsor likewise, that the bill might  
more readily be discounted. Still  
another indorser being required, pur-  
chased but he

the bill was not in proper form first  
deleted the signature of one of the  
drawers from the face of the bill. In  
an action against the prior indorsers:—  
*Held*: a bill of exchange was if any-  
thing a *literarum obligatio* & could not  
be altered by a party at his own

as it did the relief that  
drawer had against the other; the  
obligation was extinguished.—*CAL-*  
*LENDER v. KILPATRICK* (1812), 17  
*Pac. Coll.* 43; *Hume*, 70.—*SCOT.*

**2475 I. Name of payee.**—Altering  
the name of the payee of a promissory  
note is a material alteration.—*COMMON*  
*v. FITZIMON* (1841), *Ir. Cr. Rep.* 106.  
—*IR.*

**2475 II.** — *Singular altered to*  
*plural.*—The holder sued an indorser  
on a bill drawn by a single individual  
trading as A. & Co. the bill being drawn  
in the firm name. The bill had been  
altered by the words "me or my  
order" being altered into "us or our  
order." The alteration had been  
initialled by the drawer &  
The bill had been drawn & the  
tions made by the indorser:—  
the alteration was not material.—  
*SPENCE v. KNOX & SHERIDAN* (1901), 9  
S. L. T. 133.—*SCOT.*

**P. Name of holder.**—The substi-  
tution, after acceptance, of the name  
of a new holder, is an essential altera-  
tion, if made unknown to the maker.—  
*ASCH, LTD. v. DUNHAM* (1916),  
Q. R. 19 S. C. 306.—*CAN.*

**2477 I. Name of acceptor.**—*Drawer.* ]  
—The ct., satisfied by ocular inspection  
that a name had been erased from  
that of the apparent acceptor of a



had done would have vitiated the

**Acceptance written by maker on margin**

written by the maker on the margin of a promissory note after the making are no part of the instrument, & do not materially alter it.—  
c. KORN (1815), 1 Stark. 125, N. P.

**Whether acceptance thereby quali-**  
Part VI., Sect. 5, ante.

**Additional signature to note.]—**Deft. & plff. a joint & promissory note to A., plff. signing as deft.'s surety. Afterwards, A. pressing deft. for payment, time was allowed upon L. adding his signature as additional security. No new stamp was put on the note. Plff. afterwards paid A. the money:—*Held*: he might sue deft. for money paid, & the payment was not voluntary, the addition of L.'s name not annulling plff.'s original liability on the note. 8 Ad. & El. 136; 1 Will. Woll. & H. 157; 3 Nev. & P. K. B. 248; 2 Jur. 888; E. R.

Aldous v. Cornwell (1868), L. R. 3 Q. B. 481; 7 Q. B. D. 370. & Balfour, Williamson (1899), 87 L. T.

—B., C., D., & E. a joint A. for

security for a loan to A. On the death of B. obtained the note from A. for the purpose of the signature of an additional &, to secure its return, B. & C. signed the following document: "I. O. A. £200 for value received." note was returned by B. to A., with the name F. added, but the I. O. U. was not given up. The alteration was made with the assent of all parties. *Qu.*: whether the addition of the fifth name was such a material alteration as to avoid the note.

Assuming it to be so in an action by A. against B.:—*Held*: (1) inasmuch as the note was free from objection at the time the I. O. U. was given, it was admissible in evidence in support of a count upon an account stated by the I. O. U.; (2) A. assenting to a verdict being entered against him upon the count on the note, he was entitled to a judgment for £200 on the account, although particulars d that

action was brought to recover t. amount of

See.) AL. 1 V. H. 24791

The alteration of lding "C. Frères" this C. was doing business under the of C. Frères, is not a material alteration rendering the note void, inasmuch as the obligation of the maker is neither enlarged nor diminished thereby.—*RANNOFTON v. CONNOR* H. 53 B. C. 174; 29 D. L. R.

to After the issuing &

alteration even though at the time of her name being added, & forward she was a joint

—A promissory note one signing for the other, was, after maturity, signed by a third person, this third person signed as an additional maker & not as an indorser:—*Held*: there was a material alteration of the note discharging the accommodation maker.—*CANNON v. HEATY* (1897), 24 A. R. 302.—CAN.

2479 HL.—The addition of a signature to a note as maker is not such an alteration as is contemplated by Bills of Exchange Act, s. 145.—*BOLTON v. SHAW* (1917), 1 W. W. R.

B. 548; 14 L. J. C. P. 175 135 E. R. —Bell. Buck

(1845), O. S. 93 L. R. 1

2481. several A. on a joint & by A., B., & C. when it was first that the note at the was intended by B. & deft. only, & that, after it was made by H. & deft., being the making by deft. in the the note "was & negotiated, that is to say by " B. & deft., plff. it in a material part by causing C. to sign it as a joint & that this was not in correction of any nor to further any intention of the parties o the note was first made by deft., or At the trial, it to plff., agreed that deft. & C. to join her in a joint & note to plff. R. & deft. signed the note it to plff. The tended to show , when deft. it, plff. & B. both intended sign, but that deft. was the addition n, &, if made of the note was would avoid it; (2) the ct., without whether the note was in law ing plff. & B. did not , though deft. did, a new trial should , with that the question might be raised

*GARDNER v. WALSH* (1855), 5 E. & B. 24 J. Q. B. 285; 25 L. T. O. N. 155; 1 Jur. N. 8. 3 W. R. 400; 3 C. L. R. 1235; 119 E. R.

Consd. 10 L. R. 3 Q. B. 7 Q. B. D.

2482. In nature of indorsement.]—An to a

on demand; an tion void, but addition in of nt, on SMITH, Esq. 27 L. J. Rey. 6; 30 L. T. O. 242; 4 Jur. N. 1 W. R. 178; 44 E. L. J. N.

AUS. 431; 11 A.R. L. R. 16.—CAN. 2479 iv.

to either P. or

It did it was it

6 A. R.

an

agency transferring it

It placed his name Y. saw this

(1

1 W. R. 721

*in: Sub-sects. 1 & 2.]*

**2483. Removal of name of maker—Joint & several note.]—**In an action by payee maker of a joint & several promissory note, debt is not entitled, under the plea that he did not make the note, to set up a defence that the note as surety, on the faith that other would also sign it as sureties, & that the name of one of them, who had so signed, was cut off from note. *Semble:* the note was vitiated by off the signature of one of the joint & makers from it.—**MASON v. BRADLEY** 3), 11 M. & W. 500; 1 Dow. & L. 380; 12 L. J. Ex. 425; 1 L. T. O. N. 203; 7 Jur. 496; E. R. 941.

*Annotation:—***Ridd, Parry v. Nicholson** (1815), 2 Dow. & L. 100; **add** (1873), 28 L. T. 607.

**Crossing of cheque.]—***See* **BANKERS & BANK-ING**, Vol. III., Nos. 630, 682.

**2484. Alteration of number on bank notes.]—**In an action against the Bank of England for the non-payment of notes payable to bearer which had been regularly issued by the bank, it appeared that the notes had been *bona fide* purchased by plff. for value, but that before plff. took them the notes had been altered by erasing the numbers upon them & substituting others, with the object of preventing the notes from being traced, as payment had been stopped & a notice issued specifying their numbers: *Held:* although the alteration did not vary the contract, it was material in the sense of altering the notes in an essential part, & the notes were vitiated, so that plff. could not recover in his action on them against the Bank. **SUFFIELD v. BANK OF ENGLAND** (1882), 10 Q. B. D. 555; 51 L. J. Q. B. 401; 47 L. T. 110; 16 J. P. 500; 30 W. R. 932, C. A.; *rearg.* (1881), 7 Q. B. D. 270.

*in Bank v. Walker* (1883), 11

12 L. Ch. 451.

A Bank of England note, which altered in number & date, paid to plffs. bank for value by debt., both the note to be

at the Bank of England, where the & payment was to

Plffs. W. in by A. co. being indebted to ed to to plffs. a note of the after the note was before its delivery, manager altered the note by the words "jointly & severally" this at the in its W. L. R. by the by of The of of removal by R. 27

plff. could not

with

a fortnight spent in tracing the note to debt., plffs. payment of it from him, & on July 21, sued him for the amount. On Aug. 18, 1880, Act received the *Held:* (1) before the Act the Bank was not liable on the note, which was worthless; (2) s. 64 was not retrospective, & even if it were so, the "necessary modifications" referred to in s. 89 would exclude Bank of England notes altogether from the operation of s. 64, & even if the proviso of s. 64 would otherwise have affected the altered bank note, the alteration was "apparent," as the Bank could at once discern & point out to the holder of the note that it had been materially altered, although the alteration was not obvious to everybody; (3) plffs. having received from debt. a worthless note on which no one could be sued, were entitled to recover in the action for money had & received.—**LEEDS BANK v. WALKER** (1883), 11 Q. B. D. 84; 52 L. J. Q. B. 590; 47 J. P. 502.

*Annotation:—***Ridd, Imperial Bank of Canada v. Bank of Hamilton**, [1903] A. C. 49.

**Effect of alterations on stamp duties.]—***See, generally,* Part XXV., Sect. 3, *post*.

#### SUB-SECT. 2. ALTERATIONS TO CORRECT MISTAKES.

**2486. "Or order" added—Bill.]—**Where a bill of exchange was put into circulation by indorsement, though it wanted the words "or order":—*Held:* the insertion of those words by the drawer, with the consent of the parties, did not vitiate the instrument.

This was not a new instrument, but merely a correction of a mistake (**LE BLANC, J.**).—**KERSHAW v. COX** (1800), 3 Esp. 246, N. P.

*Annotations:—***Expld. & Distd.** **Knill v. Williams** 10 East, 431. **Expld.** **Bathe v. Taylor** (1812), 15 East, 111. **Expld.** **Grover** (1813), 1 M. & W. 735; **Hall** 8 Dow. & L. 464. **Expld. & Distd.** (186), 2 C. & P. 401. **Expld.** **Byrom v. Thompson** (1839), 3 Jur. 1121. **Expld. & Appld.** (1841), 2 Man. & G. 909; **London & Provincial** Roberts (1874), 22 W. R. 402. **Mentd.** **Cole v.** 12 East, 471.

**Note.]—**Deft. gave plff. a promissory note, without the words "or order." months afterwards plff. mentioned the omission

**ARNOLDI** 21 T. Occ. N. 2 O. L. R. 624.—**CAN.**

a. Negotiable instrument made "Or"

causing the "or order" to be

ATY.

IND.

#### PART XIV. SECT. 7. SUB-SECT. 2.

b. General rule.]—If an alteration in a bill or note is made in pursuance of the original intention of the who claim that it is void by of the alteration, that is not an alteration as renders it void.—

**v. Shaw** (1917), 1 W. W. R. 421; 11 Alta. L. R.

**2487 l. "Or order" added—Note.]—**Upon a purchase of goods

the note do not

to B., who



**Held:** such alteration did not vacate the bill.  
r. PICARD (1824), Ry. & M. 37, N. P.

2491.  
of promissory note, dated \_\_\_\_\_, for  
payment of \$145 4c., on or before Apr.  
by the note, at the time of  
defda. promised to pay the sum  
without specifying any time for the  
that, after the note was made & issued,  
& was complete & delivered to plff., the note was,  
by defda's consent, but without same being re-  
altered by plff. in a material part by  
making \_\_\_\_\_ to be \_\_\_\_\_ on or before Apr. 15,  
1845, & by the insertion of the words \_\_\_\_\_ to be  
paid on or before Apr. 15, 1845."  
that, \_\_\_\_\_ at the time of making, basing,

the note to plff., & if alteration was made, it was meant & intended by plff. & defts. that the note should be payable on or before Apr. 15, 1845, & that the words so inserted in the note should be inserted but by the mistake of plff. & defts. the note was made & issued, & was complete in itself, without specifying any time of payment, & that the alteration was made with the intent & purpose of correcting the mistake, &

to of plff.  
& defts., within a reasonable time, & be  
negotiation. Rejoinder, that, before & at  
time of the making, issuing, & completing of  
note, & before the alteration, it was not  
by plff. & defts. that

payable on or before Apr. 15, the rejoinder was bad, as traverse, by putting in issue parties before as well as at the note; (2) the plea was no declaration, inasmuch as the stamp laws the stamping of certain kinds of notes before trial, & the plea did not show that this was not one of those cases. *Semble*: the replication was bad, in not showing that the promissory note was not originally binding upon the parties before the

**Reid, Jones v. Jones** L. J. Ex 2

or  
 by A  
 an  
 upon  
 CAN.  
 2489 I.  
 of  
 bill,  
 to  
 118 SH. (CY.  
 2489 II. ————) — AD  
 it  
 the purpose  
 & making  
 by all

the bank to all the holders of the notes. This, with the plea, that the bank was forced out by debt, in the result the bank were held to have lost their remedy on the note on the ground of material alteration. The bank then brought this action against debt, for damages for negligence:—*Held*: the form of the note as taken was to all intents & purposes as valid as if made jointly & severally, & therefore in this regard only nominal damages could be recoverable.—*Bank of Montreal v. The Receiver General of the Province of Canada*, 5 CHAMBERLAIN (1903), 23 C. L. T. 256; 6 O. L. R. 201; 2 O. W. R. 558.—CAN.

1. Name of Indorser.—Held: summary diligence against the drawer was insufficient, & the charge could not be turned into a libel, on a bill where the indorsement had been vitiated.



1240: 30 Nov. Jan. 722.

d. Inaction of "relly." - Intl. branch, accepted a

1955

M. & W. 873; 3 Dow. & 476; 15 L. J. 163 R. 730.

*Hend. R. v. Watts* Deans. C. C. 326.

**Insertion of prior indorsee's name.]—**To a declaration on a bill of exchange accepted payable to the order of L., & by L. indorsed to deft., & by deft. to plff., a plea that the bill was, after the indorsement by deft., materially altered without the consent of deft. by the insertion of S.'s name as an indorsee prior to deft.'s indorsement:—*Held*: bad, as the alteration did not vary the nature of the instrument, but was a mere correction of a mistake which gave the instrument the effect which it was intended to have.—*LONDON & PROVINCIAL BANK v. ROBERTS* (1874), 22 W. R. 402.

**2493. Alteration of time of payment.]—**The drawer of a bill of exchange materially altered it after acceptance (by changing "three months" into "twelve months") in order to correct a mistake made in drawing it:—*Held*: as the acceptor had not given any authority to the drawer to make the alteration, he was not liable on it.—*HUTTON v. BLAKEY* (1897), 13 T. L. R. 441.

**Effect of alterations on stamp duties.]—***Sec.*

**SUB-SECT. 3. — AUTHORIZED OR ASSENTED TO.**  
*Sec 1882 Act, s. 64 (1).*

**2494. Time of alteration—Question of law.]**  
question whether a note has been altered it was made, so as to render it inadmissible evidence, is for the judge at the trial, but the ct. will review his decision as they would that of a jury on any other question of fact.—*LESTER v. BROWN* (1845), 4 L. T. O. S. 419.

**2495. Authority of acceptor—Question of fact.]**  
Where, after a bill has been accepted, & before it is delivered to the drawer, an alteration is made by a third person in the date, it is for the jury to say, judging from all the circumstances, whether such third person made the alteration with the drawer, or as his agent, & in either case will be liable.—*WHITFIELD v. GOOD* (1844), 1 Car. & Kir. 325, N. P.

**Blank space left by acceptor.]—**the word "accepted," & the signature of the acceptor of a bill of exchange, a space left, which was partly filled up with the words "able at No. 28, Leicester Square," in handwriting. In an action on the bill, to

defendant was alleged that the bill was altered informally with the consent of the drawer (1873), 21 F. & R. (Ct. of Sess.) 360.—*SCOT.*  
**Insertion of "per note" drawer's signature.]—**Where the

that (be to be an

CAN.

**XIV. SECT. 7. —**  
**2500. Alteration before acceptance—**  
**Acquiescence of acceptor.]—**Two renewal bills addressed to K. & M. only were sent through the bank for acceptance. Someone added T.'s name as

that deft. the

affixed & without

any apparent ambiguity or alteration on the face of the bill, so as to call for explanation, there was some evidence from which the jury might infer, either that the words were inserted at the time, or that the space was purposely left to be filled up afterwards with the acceptor's consent.—*8 Jur.*

**2497. — Alteration not in acceptor's writing.]—**In an action by indorsee against acceptor of a bill of exchange, the bill appeared, on inspection, to have been altered in amount, & after the acceptance were the words, "at C.'s," which were not in deft.'s handwriting. Neither plff. nor deft. gave evidence as to when or by whom the alterations were made:—*Held*: it was for the jury to say, in the circumstances, whether the bill had been altered after acceptance, & if they thought it had, plff. could not recover.—*TAYLOR v. MOSELY* (1833), 6 C. & P. 273; 1 Mood. & R. 439, n., N. P.

*v. Moore* (1854), 3 E. & B.

**2498. Alteration before acceptance—By drawee on presentment—Acquiescence of holder.]—**If upon a bill being presented for acceptance, the payee alters it as to the time of payment, & accepts it so altered, but the holder acquiesces in such alteration & acceptance, it is a good bill as between the holder & acceptor. The keeping the bill, & presenting it for payment at the deferred period, is proof of such acquiescence.—*PATON v. WINTER* (1809), 1 Taunt. 420; 127 E. R.

*v. Hastings* (1815), 4

**By acceptor — Acquiescence of drawer.]—**A. drew a bill of exchange upon B., payable at 3 months, for a debt due from B. to A. On delivery of the bill to B. for acceptance, B. requested that 4 months might be substituted for 3, & afterwards, by the assent of A., the alteration was made:—*Held*: a new stamp not requisite.—*KENNERLY v. NASH* Stark. 452, N. P.

*v. J. Ex.*

**2500. — By drawer—Acquiescence of acceptor.]—**The date of a bill of exchange having been altered before it was negotiated by the drawer, the acceptor wrote the day of the month when it would become due, which corresponded with the date as altered:—*Held*: such alteration was immaterial, & could not avail the acceptor in an action brought against him by an indorser of the bill.—*LEYKAMPT v. ASHFORD* (1827), 12 Moore, C. P. 281; 5 L. J. O. S. C. P.

C. —CAN.  
payment inserted by after

had been of the d it to be was

Held (bin.— O. S.

drawee & the three accepted. Defda. sought to escape liability upon the contention that T. could not be liable as the bills were not addressed to him, & K. & M. could not be liable as they were the assumpt. *Held*: T. became liable the K. & M. would in any be liable as it was not shown

as it was probable T.'s at

O. W.



## PART XIV.—DISCHARGE.

**2501. Alteration after acceptance—Before delivery to indorsee—With authority of**  
A bill of exchange altered in date after but before it was put into the indorser's hands with the acceptor's authority:—*Held*:  
*r. GARNETT (1815), 2 Obit. 122.*  
*Williams v. Jarrett (1833), 3 B. & Ad.*

**2502.**  
A bill of exchange was payable to deft. for acceptance, who accepted it. Before the bill was negotiated, deft., at the request of the payee, that he would make it added to his acceptance the payable at Mr. L., Saint Mary Axe, London:—*Held*: a new was not required on account of the alteration.—*JACOB v. HART (1817), 6 M. & S. 142; 105 E. R. 1196.*

*Annotation*:—*Reid, Jones v. Jones (1833), 1 L. J. Ex. 249.*

**2503.** ————]—In an action by payee against acceptor of a bill of exchange, it appeared that the bill had originally been accepted by deft., payable at his own house in King's Road, Chelsea, but, six weeks after delivery of the bill to pltf., deft., at pltf.'s request, altered the description by making it "payable at B.'s."

*M.*  
151; 4 Tyr. 87; 3 L. J. Ex. 2; 149 E. R. 711.

**2504.** ———— Without drawer's knowledge—After indorsement by drawer.]—In an action by indorsee against drawer of a bill of exchange, deft. that after of the bill it was completely issued & negotiated & by him certain persons to deft. unknown without his consent altered the date of the bill. The bill had been altered by the acceptor after it had been made & indorsed by deft.:—*Held*: in substance.—(

), 12 Jur. 421.

*Head. Colombine v. Penhall (1850), 13 Q. B.*

128.

**2505.** ———— With consent of acceptor—Without consent of drawer and first indorser.]—Persons joined as drawer, acceptor, & first indorser, in making an accommodation bill, & it was afterwards issued for value to J. Previously to its *Held*: the to

informed of it, it was an action on the bill against him, that the bill had been so altered without the consent of the drawer & first indorser.—*DOWNES v. RICHARDSON (1822), 5 B. & Ald. 674; 1 Dow. & Ry. K. B. 332; 105 E. R. 1337.*

*Annotations*:—*Cons. Engel v. Stourton (1849), 33 J. P. 535.*  
*Head. Chicago Railway Terminal Elevator Co. v. I. R. Comrs. (1896), 75 L. T. 157.* *Head. Schofield v. Londonborough, (1894) 7 Q. B. 669.* *Head. Brown v. I. R. Comrs., Gordon v. I. R. Comrs. (1900), 84 L. T. 71.*

**2506.** ————]—A bill of exchange drawn by A. payable to his own order, & accepted by generally, was altered, with the consent of, while it continued in the hands of A., by the of a particular place of payment to the

so as to the did from being  
Mood.

In accordance with bill of exchange was drawn in livres sterling et deux was accepted by, B. in London, & returned without altering the in the body of the bill. When the trial, the word "quatre" had a line drawn it, & it was altered to make it with the:—*Held*: alteration did not vacate the, inasmuch it appeared to been made with the consent of the acceptor, & in accordance with the original intention of the parties, & the bill might be declared upon as a bill drawn for the sum for which it was —*HAMKIN v. BRUCK (1840), 9 Q. B. 306; 1 L. J. Q. B. 343; 10 Jur. 1094; 115 E. R. 11.*  
*AMELET v. BRUCK, 7 L. T. O. 8.*

**2508.** ———— Accommodation bill—By drawer with consent of payee.]—A bill was altered by drawer after acceptance with the consent of, but without the the bill payable

where it appeared to be an accommodation bill & where the acceptor would accept any bill drawn by the drawer, & there was strong presumptive evidence that the drawer was sufficiently the agent of the acceptor to have authority to alteration.—*JOHNSON v. GIBB (1815), 2 123.*

Without authority waiver of  
the words to,"

after bill was & no evidence was pro made with

of the acceptor, but, on that, when the bill was presented him for he expressed his great should have been inserted, & it

at his bankers for three times the amount, but added that he would call upon pltf., indorser, in 2 or 3 days, & pay the amount:—*Held*: assuming the alteration was material, deft., by to the bill. the

*J. P. 43.*

**2510.** ———— By drawer at request of Subsequent assent of acceptor.]—A bill at 3 months, drawn by A., & accepted by B., for A.'s accommodation, was indorsed & sent by post by A. to C. for value. C. returned the bill, insisting upon having one at 2 months instead. A. thereupon altered the bill, by making it payable at 2 instead of 3 months, & again sent it to C. There was no evidence that B. knew of the alteration at the time, but there was evidence to subsequently assented to its being 2 months' bill:—*Held*: the bill was well on as a 2 months' bill, & it was not avoided by

or the at

the R. was signed—*Co. v. Smith (1811), 15 W. R. CAN.*

new maker after it has been issued,

*W. W. R. 1137; reed. 11 Alta. 76.—CAN.*

R. 812; 137 E. R.

**Alteration after making of instrument—To correct**  
—See Nos. 2486-2493,

**2511. Evidence of assent.**—A joint note, signed by the directors of a stock co., was afterwards altered by the secretary into a joint & several note, without the or authority of the directors, of whom deft. one, & in answer to a letter from the informing deft. of the dishonour of the joint & separate note of himself & the other directors who were parties to it, deft. said that their letter should have his earliest attention: *Held*: that did not amount to an assent of the alteration of the note by deft., & he was not bound thereby.

It has been said that deft. assented to the alteration; but how was such assent proved? It was attempted to be shown, by two letters that were given in evidence, the one from plff.'s house, addressed to deft., requesting him to pay the note, the other, his answer thereto, in which he merely said, that their letter should have due attention. This was not sufficient evidence to show his assent to the alteration of the note. I did not draw the attention of the jury to this point, for I was clearly of opinion that there was not sufficient evidence of an assent (*BEST, C.J.*). *PERRING v. HONE* (1820), 4 Bing. 28; 2 C. & P. 101; 12 Moore, C. P. 135; 5 L. J. O. S. C. P. 33; 130 E. R. 678.

*Notes: Mentd. Bourne v. Frooth* (1820), 4 & Ry. K. R. 512; *Dickinson v. Valpy* (1829), 5 & Ry. K. R. 126; *Ellis v. Schmoock* (1829), 5 Bing. Fox v. Clifton (1830), 6 Bing. 776; *MacLae v.* (1831), 3 E. & B. L.

**2512.** ———.]—In an action by payee against maker of a promissory note, the note, on being produced, appeared to have been altered, the words "or order" having been substituted for "or other." The attesting witness, who had prepared the note, stated that he could not say whether the alteration was in his writing or not, but that he ought to have drawn the note originally with the words "or order." Deft. had paid two years' interest on the note:—*Held*: that was reasonable evidence, from which it might be inferred that the alteration had taken place with deft.'s consent.—*CARRIS v. TATTERSALL* (1841), 2 Man. & G. 890; *Drinkwater*, 209; 3 Scott, N. R. 257; 10 L. J. C. P. 187; 133 E. R. 1004.

**2513.** ———.]—Action by payee against maker of a promissory note, payable "two" months after date, with a plea that deft. did not make the note. Deft.'s signature to the note was proved, but the word "two" was evidently written on an erasure. A witness was called for plff. to prove that the note was in the same state. Before the note was read in evidence, deft. proposed to call witnesses to prove that, when the note was signed by deft. & delivered to plff., it was payable "three" months after date, & that the "two" must have been inserted afterwards. The judge received the evidence of two witnesses for deft., one of whom stated that he wrote the note payable at three months, & that deft. signed it in that state & gave it to plff., who took it away:—*Held*: the alteration had not been accounted for to the satisfaction of the ct.—*PAINTER v. HILL* (1847), 2 Car. & Kir. 924, N. P.

**Effect of alterations on stamp duties.]**  
generally, Part XXV., Sect. 3, post.

**2511 i** of J inserted in it after S. had it & without his forgery & note Plff. then wrote, as of the bank, to S. informing him that the bank had cashed the in & note: that at S mail "if the notes are O.K.;" & received a reply saying, "I guess those notes you discounted of mine to H. will be all right." Plff. then personally the note, & paid over the H. the that had discounted the repared by plff., in to at S p could not take advantage of , was not thereby th ---Wood v. 26 W. 1. 817.—CAN.

was not assented to by the —UNION BANK OF CANADA v. WEST SHORE & NORTHERN LAND CO. (1917), 23 B. C. R. 64.—CAN.

**2511 vi.** ——— Time for R. induced H. to become a party to for the to to the bank on discounting the note R. altered the note, without the or consent of H., by words "over interest

that H. had asked for time to make a settlement of the amount due to the bank upon the note after had become aware of the alteration: (1) the circumstances of the did not show that there had been within

;(2) bill within by be Act. the time of or term 18E 211.

the making of a note, it was altered by the maker to the time of payment of the indorser.

have of pay ing it.— 43 U C. R.

to inform , but until had the O. W. R. ; T O W. Hm5 v. A. as pres charged to be or

it to plff., the of a it to mal B. for

if the & co had the O. W. R. ; T O W. Hm5 v. A. as pres charged to be or



PART XIV.—DISCHARGE.

2 Act, s

Bank of England note—Alteration in number & date.—LEEDS BANK v. WALKER. No.

2515. Note payable to company—Addition of "Ltd." after company's name—Sufficient space for addition.—A promissory note was made payable to the order of The G. O. Co. The G. O. Co. having been converted into a limited co. called "The G. O. Co., Ltd.," an officer of that co., without consent or knowledge of defts. as makers of the note, inserted the word "Ltd." on the face of the note & it on behalf of the co. to plffs., who holders in due course. There was sufficient space within which to write the word "Ltd." on the face of the note, & plffs. took it without any knowledge that it had been altered:—Held: (1) the of the word "Ltd." on the face of the note was not an "apparent" alteration; (2) by 1882 Act, s. 64, the note was payable according to its original tenour, i.e., as if the word "Ltd." had not inserted; (3) the indorsement was irregular & did not entitle plffs. to sue upon it. —BANK OF TREAL v. EXHIBIT & TRADING CO., LTD. (1900), T. L. R. 722; 11 Com. Cns. 250.

5.—DUTY TO EXCH.  
ALTERATION.

2516. Blank space left in bill—Bill in two parts Each bearing full stamp.—Plffs. were finance at Paris & Lille. Defts., London bankers, were in the habit of lending their names to S., a customer, by indorsing foreign bills for him, which, when indorsed, he sold, so that he might gain by the rate of exchange, & defts. used to collect the purchase-money from the buyers, & place it to the credit of S. in the bank books, without deriving any advantage except an occasional commission on the transaction. Upon Dec. 14 S., in the above course of dealing, brought to defts. the first & second parts of a bill in two parts, dated Dec. 13, & drawn by W. on Lille for 47,050 francs "at 8 days' date." Both parts were alike, save that purported to be a first, & the other a second part

bore a full ad valorem stamp. Between the words "eight" & "days" there was a , in which several letters might , intending them to bill, & returned them to S., who the sale of same to broker, whom S., contrary of , employed to negotiate bills. In of the agreement the second part, marked with the drawee, was delivered to plffs., a broker's sold note dated Dec. 20, containing by C., was handed to defts., who then drew upon plffs., received payment for the bill, & placed the amount to the credit of S. Plffs. paid the bill on the faith of the indorsement, that defts. were the vendors. It turned out subsequently that the first part, together with a spurious second part, had been by S. or C. sold to M. for value, that the genuine second part had been altered by forging a "y" to the end of the word "eight," & that a spurious first part had to the drawees at Lille. Plffs. having obtained such second part in addition to that they held, sued as holders of the bill, to recover defts., the sum paid, alleging of tion. Defts. resisted, on the of the

Held: indorsing both parts of a bill, each b a full stamp, with a space which might fac , & completing the sale of an overdue bill was not privity between plffs. was between the not be maintained. SOCIÉTÉ GÉNÉRALE POLITAIR BANK, LTD. (1878), 27 L. T. W. R. 335.

Consol  
A. C. 514. Held.  
S. T. L. R. 179.  
2 Q. B. 660, Ma  
11917) 2 K. B. 430. Mend. C.  
1906) A. C. 350,  
& Arthur. (1915) A.

2517. Stamp covering larger sum than that on bill. Deft. accepted a bill for £22 10s., which on a e left in holder to increase the amount of bill to by the figure "2" "22" in the bill, & by the " "

PART XIV. SECT. 7.

1 the man by it, faculties, arent Exchange Act, 143. The in bill in or call in a handwriting (1917), 3 W. W. R. 235; 36 L. R. CAN.

m. Visible in which the being was other it were to -A L of the

4. If 114. CAN. D. F. of taking W. R. are on A finding and the made Held: consent. R. maker note His v. Ridd (1904), 6 O. W. R.

2517. Blank space left in bill—Negligence of acceptor.—A bill drawn on E. for £60 on a printed form was handed to him for acceptance. E.'s sight was weak & he supposed the sum of £60 was properly written in writing & in figures on the bill. He accepted as for £60. After E.'s acceptance the drawer or some person with his consent inserted before the word "sixty" the words "one hundred and" & before the figures "60" the figure "1" thus changing bill to one for £160. The fraud

# PROMISSOR

## Sect. 7.—By alteration: Sub-sects. 5, 6 & 7.]

at the end of one at the beginning of the next. Pitta, having paid the increased amount, sued the acceptor:—*Held*: there was no duty on the part of the acceptor towards the person who might subsequently become the holder of the bill, so to criticise, & so to examine the bill before he signed, as to put it out of the possibility of any additional words being afterwards inserted in it.

We cannot say there was negligence here, unless we go the whole length of saying that it is negligent to sign a negotiable instrument so that somebody else can tamper with it. I cannot go that I think it would be wrong. There is no which compels us to do anything of the sort (LINDLEY, L.J.).—ADELPHI BANK v. EDWARDS, in [1890] A. C., at p. 540.

Macmillan v. London Joint B. 439. *Consd.* London Joint Stock & Arthur, [1915] A. C. 777. *Reid.* Colonial Bank of Australasia v. Marshall (1906), 95 L. T.

—The acceptor of a bill of is not under a duty to take precautions fraudulent alterations in the bill after

A bill of exchange for £500 was presented for acceptance with a stamp of much larger amount than was necessary & with spaces left. The acceptor wrote his acceptance, & handed the bill to the drawer, who fraudulently filled up the turned it into a bill for £3,500. Being on the bill by a *bona fide* holder for value the for paid £500 into ct.:—*Held*: the acceptor no duty of precaution to pltf., & was guilty of no negligence, & was entitled to judgment.

A. C. 514; 65 L. J. Q. B. 593; 75 L. T. 234; 45 W. R. 124; 12 T. L. R. 604; 40 Sol. Jo. 700, H. L.

*Consd.* Wise v. Dunning (1901), 71 L. J.

v. King, [1902] A.

Wheeler, (1902) 1 K. B. 361. *Consd.*

Australasia v. Marshall, (1906) A. C. 559; *Consd.*

Joint Bank v. Macmillan & Arthur, [1915] A.

777. *Reid.* Bell v. Marsh, (1903) 1 Ch. 528;

Bank of Canada v. Bank of Hamilton, [1903] A.

in Joint Stock Bank, [1917] 1

*Mentd.* Union Credit Bank v. Mersey Docks

Board, Same v. Same & North & South Wales Bank,

12 Q. B. 205; Kepitigalla Rubber Estates v. National

Bank (1915), 15 Com. Cas. 137.

As cheques.]—See BANKERS & BANKING,

## Denial

bill of exchange against the acceptor that he did not accept the bill:—*Held*: it was competent for him under that plea to give in evidence, that since he accepted the bill a material alteration was made in the date, which vitiated the bill.—COCK v. COXWELL (1885), 2 Cr. M. & R. 291; 4 Dowl. 187; 5 Tyr. 1077; 1 Gale, 177; 4 L. Ex. E.

—CALVERT v. BAKER, No.

2467, ante.

2521. ———.]—B., by the authority of A., wrote the name of A. as acceptor upon a blank paper, bearing a bill stamp, & added his own name as drawer. C. afterwards filled up the bill, & added the words, "payable at the Bank of E.," under the name of A. That was done without the knowledge of either A. or B. To a declaration by indorsee against A., as acceptor, not stating the bill to be payable at any particular place, deft. pleaded *non acceptavit*. The bill being produced:—*Held*: it did not support the issue.—CROTTY v. HODGES (1842), 4 Man. & G. 561; 5 Scott, N. R. 221; 11 L. J. O. P. 289; 134 E. R. 231.

*Annotat.*:—DETT. Parry v. Nicholson (1845), 2 Dow. & L. 640.

2522. ———.]—An alteration in a bill of exchange, which does not render a new stamp necessary, cannot be given in evidence under the plea of *non accepit*, but the fact must be specially pleaded.—PARRY v. NICHOLSON (1845), 13 M. & W. 778; 2 Dow. & L. 640; 14 L. J. Ex. 119; 4 L. T. O. S. 390; 153 E. R. 327.

—*Consd.* Hirschman v. Budd (1873), L. R. 8 171. *Reid.* Vance v. Lowther (1876), 45 L. J. Q. B.

2523. ———.]—In an action by indorsee acceptor, an alteration in the date of a bill of exchange, made after acceptance, without knowledge or assent of deft., may be taken of under a plea denying that deft. the bill.—HIRSCHMAN v. BUDD (1873), L. R. 8 Exch. 171; 42 L. J. Ex. 113; 28 L. T. 602; *sub nom.* HERSCHMAN v. BUDD, 21 W. R. 582. L. P.

of in by the maker, & the maker increase the amount of the by filling in the blank word in its for value, & if on the its to be genuine, the so f bond THOMPSON JAN.

AUS.

22 of a

by its v. GRAHAM -AUS.

w. ———. Negligence of indorser.]—If an indorser sign his name on the back of a note having space to the left of the amount sufficient to permit of

for, but having indorsed on it contemporaneously with its on the edge of the paper, the words "the within note not to be sold," which indorsement the evidence showed formed part of the contract between the parties. The note was transferred to B., with the whole of the indorsement torn off, but without destroying any

the face of the note:—*Held*: not be protected on the of any negligence on D.'s part, as the note was issued in a & the doctrine of not apply to

perfected DAVID (1883), 3 O. R.

PART XIV. SECT. 7,

6. either

mont under MARK 215.

a. Denial of indorsement.—Whether alteration available defence under such plea.]—*Held*: alteration of time of payment was properly given in evidence under the plea "did not indorse." MURKIN v. CULVER (1845), 5 U. C. R. 215.—CAN.



void:—Held: the plea was  
lege the alteration  
optance.—LAWRO  
M. & W. 629; 9 L. J. Ex. 59;

of a promissory  
months after date, with a plea that deft. did  
make the note. Deft.'s signature to the note was  
was

against

plain  
Kir. 924, N. P.

(1847), 3 Car.

SUB-SECT. 7.—EVIDENCE

On whom burden of proof—To show  
alteration not improperly

on an instrument which, on the face of it,  
appears to have been altered, it is for him to show  
that the alteration has not been improperly made.

Where an alteration appears on the face of a  
bill, the party producing it must show that the  
was made with consent of parties, or  
the issuing the bill

DICKINSON (1828), 5 Bing. 183; 2 Moo. & P.  
289; 7 L. J. O. N. C. P. 68; E. R. 1031.

2526. To explain circumstances of altera-  
tion.]—In an action on a note, if it appear on the  
inspection of the note that it has been altered, it  
lies on plff. to show that the alteration took place  
in such circumstances as will entitle him to

3 C. & P.

Mood. & M. 116, N. P.; reved. on another point  
(1828), Dan. & L. 83.

Knight v.

1. &  
P. 273;

2527. ——— Declaration on a bill of  
drawn Dec. 10, by indorsee against  
issue on the indorsement. The bill,  
produced at the trial, to prove the indorse-  
appeared to have been altered, in the date,  
from Dec. 15 to Dec. 10:—Held: on the issue, the  
indorsement might be read without previous proof

a bill of  
used on a trial, appears to have been  
jury cannot, on inspection of such bill, without  
proof, decide whether it

time of ma or at a  
Where a bill was drawn a 2 months'  
had begun with the words "Three months"  
"but the word "three" had been  
as if blotted while the ink was wet, &  
upon it, "two" written under-  
In the no

evidence to account for the  
the document, by itself, was no  
the jury of the alterations having been made  
the writing of the bill, &  
on a plea of must

Ad. & El. 215; 3 Nov. & P. K. B. 375; 1 Will.  
Woll. & H. 280; 7 L. J. Q. B. 144; 2 Jur.  
112 E. R. 819.

Ad. & El. 31;  
Concl.  
Parry

Man. &

11  
155.  
Dm4.  
Dist.

H. 208  
Concl.

1841), 20 L. J. Q. B. 387.  
Bruck (1845), 7 L. T. O.

Am v.

2530. ——— Action between original parties.]  
—Where a bill has been altered in its date, it is  
incumbent on plff., though the action is  
the original parties to the bill,

to words &

The  
for  
of  
to plff.,

as a  
was required to pay to the  
of D. the sum of  
the defence  
CHAY

(1819), 1 H. & C.

PART XIV. SECT. 7, SUB-SECT. 7.

him to name  
the

bill  
It was founded

a printed form in the words  
'After date, pay to  
sterling, value received,' &  
upon it, in numerical  
as indicating that the  
which the said bill of  
to be drawn & accepta  
no more: & that at such  
his

was  
, &  
etc.,  
at  
a bill

in  
11.  
rebat.

for non-suit

from

to D., & after it  
etc., the ' was sum in a  
material particular, in th  
numerical figures '£150' were  
to £150, & the words 'one  
& fifty pounds' were altered into  
hundred & fifty pounds, without the  
knowledge, etc., of deft. &

the altera-  
tion to have taken place after the bill

but if  
could  
to a non-suit,  
it

allowed a proof of  
circumstances in which the  
were made, in support of the bill  
originally produced with his affidavit.  
—Kear v. M'Ewen (1845), 7 Dunl.  
(Cl. of Sess.) 400.—SCOT.

d. Note appearing to have been  
all written at one time.]—To an action  
on a promissory note defts. pleaded  
that the note was rendered void by  
being materially altered. There was  
a conflict of evidence as to the altera-  
tion referred to, but plff.'s version was  
supported by the appearance of the  
note itself, which appeared, on the  
face of it, to have been all written at  
the one time, with the one ink, & in  
the one handwriting, & there was  
evidence of having been altered. The  
appearance of the note being consistent  
with plff.'s evidence, & hardly recon-  
ciliab. with that of defts., the trial

C C

# 386 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

1. 7.—By alteration: Sub-sects. 7 & 8. Sect. 8.]

of the circumstances in which the alteration took place, & it cannot be left to the jury, upon the mere view of the instrument, to say whether the alteration took place before or after

Man. & G. 909; Drinkwater, 209; 3 Scott, N. R. 10 L. J. C. P. 227; 133 E. R. 1012.

Annotation:—DMD. Parry v. Nicholson (1845), 2 Dow. & L. 610.

To show alteration prior to indorsement—Action by indorsee against acceptor.

In an action by indorsee against acceptor of a bill, the date of which appears to have been altered by the acceptor, it lies on pltf. to show that the alteration was made previous to the indorsement of the bill, by the drawer to whose order it made payable.—JOHNSON v. MARLBOROUGH 313, N. P.

2532. — To show alteration made without knowledge or consent.—Assumpsit on a bill of exchange by indorsee against acceptor. The only plea was, that the bill had been altered after acceptance. The brother of D., the drawer of the bill, stated that deft. was in the habit of accepting bills for his brother's accommodation, that the bill was drawn on Apr. 11, & accepted by deft. at 2 months, & that about May 6, because the drawer was afraid he should not be able to meet it, he, the witness, altered it, by his brother's desire, & without deft.'s authority, from 2 to 5. The witness said that he did not to deft. what he had done, & that he had paid the bill to W., but would not swear that he did so before the month of June: Held: the important part was, whether the alteration was made without the knowledge & consent of deft., as he was a friend of the drawer, & his friendship to a later time than the bill, & as the would not only benefit the drawer, but also deft. acceptor, & the jury should ask themselves, drawer being in ct. & not called, whether they with the stopping up one aperture, without showing that the was not transmitted through the other. —BARKER v. MALCOLM (1835), 7 C. & P. 101, N. P.

2533. — To show original state of acceptance—Bill offered in evidence against acceptor—Alteration without assent of acceptor.—Where a bill of exchange, altered by making the bill payable at a given place, without consent of the acceptor, is offered in evidence, in an action against the

acceptor:—Qu.: whether the onus of proof to show the original state of the acceptance lies pltf. or deft.—SPARKS v. SPURN (1827), 5 J. K. B. 293.

2534. Alteration made by subscribing witness.—If an indorsement upon a promissory note purports to have been altered by a subscribing witness, the witness must be called to prove such indorsement.—STONE v. METCALF (1815), 1 Stark. 53, N. P. v. Crick (1830), 1 M. & W. 232.

Evidence that other bills similarly altered.—In an action on a bill of exchange, where the defence is, that the bill has been altered, deft. cannot go into evidence to show that other bills have been likewise altered.—THOMPSON v. MOSELY (1833), 5 C. & P. 501, N. P.

m:—Mentd. Hope v. Liddell (1855), 7 De G. M. & G. 331.

Evidence of assent.—See Nos. 2511–2513, ante.

## 8.—EFFECT AND EXTENT OF AVOIDANCE.

: 1882 Act, s.

2536. Discharge of drawer & indorser.—If upon a bill being presented for acceptance, the payee alters it as to the time of payment, & accepts it so altered, he vacates the bill as against the drawer & indorsers, but if the holder acquiesces in such alteration & acceptance, it is a good bill as between the holder & acceptor, & the holder cannot afterwards maintain an action on the case against the acceptor, for thereby destroying the bill.—PATON v. WINTER (1809), 1 Taunt. 420; 127 E. R. 896.

—Reid. Walton v. Hastings (1815), 4 Camp.

2537. Discharge of co-promisor.—NICHOLSON v. REVILL, No. 2555, post.

2538. Right to sue on original consideration.—The vendee of goods paid for them by a bill of exchange drawn by him on a third person, & after it had been accepted the vendor altered the time of payment mentioned in the bill, & thereby vitiated it:—Held: by so doing he made the bill his own, & caused it to operate as a satisfaction of the original debt, & he could not recover for the goods sold.—ALDERSON v. LANGDALE (1832), 3 Ad. 600; 1 L. J. K. B. 273; 110 E. R. 241.

2539. — If drawer sues acceptor upon the bill, in consequence of having altered

the bill, in consequence of having altered it, the plaintiff is not bound to show that the bill was altered before it was indorsed, but it is sufficient to show that it was altered before it was presented for acceptance. —A. pi. for £100 was indorsed by the Deft. signed as second indorser to enable the payee to discount the note. After such indorsement, but before the payee fraudulently altered the amount of the note to £200, the payee fraudulently altered it with pltf. as a genuine note for £200. The note not being paid at the due date, pltf. sued deft. for the full amount thereof: Held, that the payee were liable only for the original sum appearing on the bill at the time it was altered. —AF.



## XIV.—DISCHARGE.

the bill in a material part, he may still recover upon counts on the original consideration.—**ATKINSON v. HAWDON** (1835), 2 Ad. & El. 638; 1 Har. & W. 77; 4 Nev. & M. K. B. 409; 4 L. J. K. B. 85; 111 E. R. 242.

Banking Co.

from  
34 Dear.

2540.

notes, but the action failed owing to a material alteration in the notes. He afterwards sued to recover part of the consideration, for which the promissory notes had been given:—*Held*: although the claims in the two actions arose out of the same transaction, they were in respect of different causes of action.—**PAYANA REENA SAMI-NATHAN v. PANALANA PALANIAPPA**, [1914] A. C. 618; 83 L. J. P. C. 131; 110 L. T. 913, P. C.

As between principal & surety.—See Sect. 12,

### SECT. 8.—BY MERGER.

See.

2541. Judgment—Unsatisfied—Against drawer—Action against first indorser.—If the indorsee of a bill, on default of payment by the

against the drawer, but do not take on, this recovery cannot be pleaded in bar to a second action on the same bill, by the same indorsee, against the first indorser, for although the indorsee has recovered damages, he has not received satisfaction.—**LAXTON v. SWIFT** (10 8 Mod. Rep. 80; 1 Lut. 878; 2 Show. 494; E. R. 55, Ex. Ch.

*Held*. **Lechmere v. Fletcher** (1883), 3 L. 728.

#### Against

**Action against prior indorser.**—The holder of a bill of exchange may sue a prior indorser, notwithstanding he has ineffectually taken in the body of a subsequent indorser, & wards set him at liberty.—**HAYLING v.** 2 Wm. Bl. 1235; 96 E. R. 728.

*Held*. **English v. Darley** (1809), 2 Bos. & P. 61; **Michael v. Myers** (1843), 1 Dow. & L. 792.

2543. ——— **Against one joint contractor on separate instrument—Action against other joint contractor on original contract.**—An unsatisfied judgment against one joint contractor on a bill of exchange, given by him alone for the joint debt, is a bar

on the original

Pitts.

of  
note could not be  
**PROVINCIALE v. ARNOLDI**  
C. L. T. Occ. N. 582; 2 O. L. R. 21

L. note acceded

made by defts., W. & B., to N., & by N. to pitfs., in renewal of note for a larger amount J. W., & indorsed by N. & B.

on. After signed, & while it was in the hands of N., before delivery to pitfs., the "jointly & severally" were in by N., changing it from a joint to a joint & several note:—*Held*: the 1, but pitfs.

*Held*: the action original holder, to an action by any

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2541 L. —

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L. R. 114.

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### PART XIV. SECT. 8.

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WILL. 21

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against partnership.—**C. & A. v. a partnership under the of "C. & A."** Both **Ultimate &**

between them, she released L. claims which she might him by virtue of the mentioned:—*Held*: the bank was of their entire claim under that is, its right of not all parties to the release by the bank of against the bank & all claiming under them.—**HARREL** (1894), Q. R. 13 K. B. 475.—CAN.

9.]

deft. & W. After the sale the partnership was  
 Pltfs., who were not aware of the dis-  
 drew bills for the price of the goods,  
 which were accepted by W. in the partnership  
 name. Pltfs. sued W. in the partnership name on  
 the bills, & recovered judgment, which was not  
 satisfied. Pltfs. afterwards sued deft. for the price  
 of the goods:—*Held*: the judgment against W.  
 on the bills was an answer to the action.—*CAMBER-  
 FORT v. CHAPMAN* (1887), 10 Q. B. D. 220; 58  
 L. J. Q. B. 639; 57 L. T. 625; 51 J. P. 455; 35  
 W. R. 838; 3 T. L. R. 788, D. C.

108. *Warrain v. Cox*, *v. Evans*, [1895] 1 Q. B.  
*Huckley*, [1894] 1 Q. B.  
 K. B. 139.

**2544.** ————An unsatisfied  
 judgment against one joint contractor, on a cheque  
 given by him alone for the joint debt, is not a bar  
 to an action against the other joint contractor on  
 the original contract.—*WEND PROSSER v. EVANS*,  
 [1895] 1 Q. B. 108; 64 L. J. Q. B. 1; 72 L. T. 8;  
 43 W. R. 66; 11 T. L. R. 12; 39 Sol. Jo. 26; 9  
 R. 830, C. A.

**execution—Against acceptor—No  
 of drawer.**—The holder of a bill sued  
 acceptor, & charged him in execution. The  
 having obtained his discharge, the holder  
 then sued the drawer, who, after paying the bill,  
 the acceptor, & charged him in execution:—  
 : that was regular, deft. having been charged  
 in execution, at the suit of the holder, not being  
 a satisfaction as between the drawer & acceptor.—  
*ONALD v. BOVINGTON* (1792), 4 Term Rep.  
 100 E. R. 1323.

*T. O. R.*  
 2 M. &

**2546.** ————Not producing satisfaction—Against  
 joint covenantor—Action of covenant.—One of  
 three joint covenantors gave a bill of exchange for  
 part of a debt secured by the covenant, on which  
 bill judgment was recovered:—*Held*: such  
 ment was no bar to an action of covenant  
 the three, such bill, though stated to have

*HARRFORD* 17 C. R.  
*CAN.*

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 for the indorser,  
*C. DOUGLAS*  
*CAN.*

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 17 U. C. R.

the drawer, W., pleaded  
 after one of the bills became  
 payable, & while the others were  
 running, it was agreed that W. should  
 all the  
 bills:—*Held*: the  
 was only a  
 the bills, &  
 was no merger.—*ROSS v. WINANS*  
 5 C. P. 185.—*CAN.*

**2549 II.** —  
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 total security  
 d.—*MURRAY v.*  
 U. C. R. 333.—*CAN.*

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**2549 III**

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given for the payment & in satisfaction of the  
 debt, not being averred to have been accepted as  
 satisfaction, nor to have produced it in fact.

The note or bill, not having been accepted as  
 satisfaction for the debt, could only operate as a  
 collateral security; & though judgment has been  
 recovered on the bill, yet not having produced  
 satisfaction in fact, pltf. may still resort to his  
 original remedy on the covenant (*GROSE, J.*).—  
*DRAKE v. MITCHELL* (1803), 3 East, 251; 102  
 E. R. 594.

*Bell v. Banks* (1841), 3 Man. & G.

19 Q. B. D.

1 Q. B. 108.

*monday Vestry v. Ramsey* (1871), L. R. 6 C. P. 247;  
*Davison, Ex p. Chandler* (1884), 13 Q. B. D. 50. *Mentd.*  
*Goldrel, Foucard v. Sinclair & Russian Chamber of Com-*  
*in London*, [1918] 1 K. B.

**2547. Warrant of attorney—Judgment not en-  
 tered up.**—An action having been brought against  
 the acceptor of a bill of exchange, it was agreed  
 between the parties, that deft. should pay the  
 costs, renew the bill, & give a warrant of attorney to  
 secure the debt. Deft. gave the warrant of attorney,  
 & renewed the bill, but did not pay the costs. In  
 an action on the first bill deft. contended that the  
 debt due upon the bill was merged by the warrant  
 of attorney:—*Held*: as judgment had not been  
 entered up, the warrant of attorney was merely  
 a collateral security, which could not merge the  
 original debt.—*NORRIS v. AYLETT* (1809), 2 Camp.  
 N. P.

*Mentd. Atherton v. Heard* (1844), 8 Jur. 753.

**2548.** ————Between different parties.—(Cir-  
 cumstances (*See No. 2573, post*) in which:—*Held*:  
 the debt on a promissory note was not merged  
 in a warrant of attorney, the warrant of attorney  
 being between different parties.—*BELL v. BANKS*  
 (1841), 3 Man. & G. 258; *Drinkwater*, 236; 3  
*Scott*, N. R. 497; 5 Jur. 486; 133 E. R. 1140;  
*sub nom. BELL v. SHUTTLEWORTH*, 10 L. J. C. P.  
 230.

*King v. Hoare* (1844), 13 M. & W. 494;

*Allen*, [1899] 1 Ch. 353; *Isaacs v. Saltsstein*,  
 K. B. 139.

**2549. Deed—Given as further security—Note**

the bills sued on, was collateral only,  
 & there was no merger.—*GORE BANK*  
*v. McWHINTER* (1868), 18 C. P.  
*CAN.*

a mtrge. from M., to secure the payment  
 of  
 him & indorser to them by deft. The  
 mtrge. was subject to a proviso to be  
 void on payment of \$4,300 with  
 interest in one year, "the said sum of  
 \$4,300 being represented by certain  
 a held by the mtrgees,  
 or substitutions therefor that may  
 hereafter be given for the same. All  
 to be paid within one year from this  
 date":—

2 A. R. 102.—*CAN.*

as a collateral security:  
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## PART XIV.—DISCHARGE.

intended to continue as existing security.]—  
TWO PENNY v. YOUNG, 10 Q.B. 200.

—Mortgage with covenant to  
r. BAKER, No. 2561,

—Parties

stances No. 2674, post) in which:  
note did not merge in a  
parties & the sum secured not being the —  
r. MAYOR (1865), 19 C. B. N. S. 76;  
L. J. C. P. 230; 12 L. T. 457; 11 Jur. N. S.  
13 W. R. 775; 144 E. R. 714.

Lamps Comr. v. Hope, (1891) A. C.  
(Green & Blue

Containing covenant to retire notes—  
Proviso that simple contract should not merge as  
specialty.—Where a deed contained an express  
covenant to retire & pay promissory notes, & a  
proviso that the simple contract should not  
in the specialty:—*Held*: even if the  
simple contract to a certain extent were  
still there was but one debt, & that had  
debt by specialty.—STAMPS COMMISSIONER v.  
HOPE, [1891] A. C. 476; 60 L. J. P. C. 44;  
L. T. 268, P. C.

on bills, & that  
of payment for  
night,  
notice, enter  
mitge, also contained a covenant to  
pay the bill  
merger.—GORE BANK v. EATON  
27 U. C. R. 332.—CAN.

—Note ma-

on May 13, 1857. On  
it executed to plffs. a mitge  
on Nov. 1, 1857, for a sum  
the note: but it was expressly agreed  
in the mitge. that it should operate as  
a collateral security only:—*Held*:

U. C. R. 101.—CAN.

certain

for the amount of defts. liable  
the notes, giving credit to the pur-  
chasers for the purchase-money, &  
taking their notes & a mitge. on the

NORTH AMERICA v.  
(1851), 8 U. C. R. 88.—CAN.

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CVILLIER v. U. C. R.  
CAN.

2540

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the note, plff. without H.'s knowledge,  
accepted a chattel mitge. for the amount  
secured by the note and for some addi-  
tional items, with a proviso for redemp-  
tion on Feb. 3, 1874, with interest at 10  
per cent., & with the usual covenants  
for payment. The mitge. did not on its  
face refer to the note, but it was proved  
that it was the understanding between  
plff. & H. that it was to be received as  
collateral security only, & not to affect  
plff.'s remedy on the note:—*Held*:  
the mitge. did not operate as a merger  
of the note.—CROSS v. HODGINS  
(1874), 42 U. C. R. 861.—CAN.

1. —Mortgage by indorser to  
holder.—Note held as security for debt  
of indorser.—A person, having a note  
of a third party indorsed by debtor  
as security for a portion of his debt,  
took a mitge. from his debtor for the  
whole sum due, not referring to, &  
payable after, the note, & with the  
usual covenant to pay the money:—  
*Held*: the remedy against debtor on

Comm.  
Field,  
902: 1

r. I.

As  
notes  
As

parties to joint  
acceptances.—See Sect.  
principal &

C. 317;  
C. 419;  
L. J. P. C. 113.

joint & several

### SECT. 9.—OF PARTIES TO JOINT AND JOINT AND SEVERAL PROMISSORY NOTES AND ACCEPTANCES.

See, also, Nos. 2205, 2331, 2354, ante.

2558. Discharge of one discharges other.—The  
holder of a joint & several promissory note of  
A. & B., by discharging A., discharges B. also.—  
NICHOLSON v. REYLL (1886), 4 Ad. & El. 675;  
1 Har. & W. 756; 5 L. J. K. R. 129; 111 E. R.  
941; *sup*  
M. K. B.

Dodd, Cardwell v. Smith (1886), 3 T. L. R. 179;  
r. Barker (1885), 4 K. & R. 760; Webb v.

U. C. R.

the note was extinguished. MATTHEW.  
SON v. BROWN (1813), 1 U. C. R. 179.  
CAN.

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when deft. & plff. had come to a  
& deft. had given a  
what he owed plff., in  
had thus become merged: *Held*: the  
note having been taken by plff. as  
payment of part of the mitge., & thus  
separated from the mitge. debt, plff.  
was entitled to recover.—HOULTON v.  
MCNABB (1881), 11 C. P. 598.—CAN.

2. —Bills of note subsequent  
to mortgage.—There is no merger of  
bills of exchange given subsequently  
to a mitge. deed for money due under  
the mitge., where the deed provides  
that it shall not merge, release, pre-  
dico, or affect any bills which the  
in respect of the  
in the deed to

(1865), 3 N. Z. L. R.

N.Z.

in taking a mitge. for  
a note for \$1  
there could be no merger.—BANK OF  
UPPER CANADA v. BARTLETT & O'HARE  
(1861), 13 C. P. 138.—CAN.

3. —Note payable before  
mortgage.—The holder of a mitge.  
security may take in addition a note  
from the mitgor, with an indorser: &  
the fact that the time mentioned for  
the defence of the mitge. is a period  
beyond the maturity of the note is,  
in the absence of fraud, no defence to  
the indorser.—BANK OF UPPER CANADA  
v. MURKWOOD (1851), 5 U. C. R. 116.—  
CAN.

### PART XIV. SECT. 9.

2559. Discharge of one discharges  
other.—A. & B. granted a bill, which  
was deposited with a bank in security  
of such advances as might be made to  
C. during its currency. The bank,  
during its currency, discharged B.:—  
*Held*: this discharge liberated A. from  
his entire liability.—BARTON LORRA

# 390 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

## Sect. 9.—Of parties to joint and joint and notes and

*Re Wilmershausen, Wilmershausen v. Wilmershausen* (1890), 62 L. T. 541. *Mentd. Kearsley v. Cole* (1816 M. & W. 128; *Owen v. Roman* (1850), 13 Beav. 196; *Evans v. Brembridge* (1855), 2 K. & J. 174; *Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth*, [1891] 1 Ch. 337.

**2554.** — Judgment against one—By confession.] — *Semble*: If the holder of a joint & several promissory note enter up judgment by *cognovit* against one of the makers, & levy part under a *f. fa.*, this is no discharge of the other.—*AYREY v. DAVENPORT* (1807), 2 Bos. & P. N. R. 474; 127 E. R. 714.

— Payment by one—Effect of erasing name of one of several co-promisors.] — The holder of two joint & several promissory notes of A. & B., one of which notes only was due, received from A. a sum exceeding the amount of the note which was due, & exceeding A.'s moiety of the two sums for which he was liable on both notes, & gave up the note which was due & erased A.'s name from the other note:—*Held*: A. was discharged, & thereby B. also. *Qu.*: whether the of a joint & several promissory note, by erasing the name of one of the co-promisors, the other. —*NICHOLSON v. REVILL*, 4 Ad. & El. 675; 1 Har. & W. 750; 5 J. K. B. 129; 111 E. R. 941; *sub nom. NICOLSON v. REVILL*, 6 Nov. & M. K. B. 102.

*Consd. Thompson v. Lock* (1846), 3 C. B. 1, *Cardwell v. Smith* (1886), 2 T. L. R. 779. *v. Barker* (1855), 4 E. & B. 789; *Webb v. Hewitt* (1857), 3 K. & J. 438; *Bateson v. Gosling* (1871), L. R. 7 C. P. 2; *Simpson v. Henning* (1875), L. R. 10 Q. B. 406; *Re Wilmershausen, Wilmershausen v. Wilmershausen* (1889), 62 L. T. 541. *Mentd. Kearsley v. Cole* (1816 M. & W. 128; *Owen v. Roman* (1850), 13 Beav. 196; *Evans v. Brembridge* (1855), 2 K. & J. 174; *Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth*, [1891] 1 Ch. 337.

**2556.** — A. being sued on a joint & several note made by himself, & by B. C., that he paid to plff., & plff. the money in the declaration mentioned, in full satisfaction & discharge of the debt & damages in the declaration mentioned:—*Held*: the plea was sustained by proof that the amount of the note was paid by C.—*BEAUMONT v. GREATHEAD* (1846), 2 C. B. 494; 3 Dow. & L. 631; 15 L. J. C. P. 130; 6 L. T. O. S. 297; 135 E. R. 1039.

BANK THOMSON

2554

G. & N. as makers of for \$25. The writ served on N. & G. N. appeared & pleaded in to the his defence, & confessed the action, & final judgment was entered against him, on which some payments were made. Later, plff. commenced proceedings against G., who, under an agreement reserving his rights, appeared & pleaded:—*Held*: the judgment entered on confession against deft. N. was an answer to the claim subsequently made against deft. G.—*McDONALD v. GILLIS* (1909), 33 N. S. R. 144.—CAN.

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the ren charged O. W. N.

joint obligants in obligant in

paid the bill in which he was sole granted security for the bills, & thereupon obtained from the holder, in which the holder's claims against B. were fully reserved:—*Held*: B. was not discharged.—*Lewis v. ANSTRETH*

r. Gibson

I. S.

(1848), 12 Q. Moon (1852), 12 C. B. 261; Tetley L. R. 2 Exch. 275; Har Co. (1909), 101 L. T. 60 20 L. J. C. P. 81; Goodwin v. Cremer 757; Cook v. Hopewell (1856), 11 Exch.

38 L. (1919) A. C.

Gowens v.

Of smaller sum than due.]—

Where the holder of a promissory note accepts from one of the parties jointly & severally liable a smaller sum than the full amount thereof, & discharges him from any further payment, the effect is not to discharge other parties liable on the note from the balance due upon same, unless the holder's conduct has been such as to treat the debt as wholly satisfied.—*STEVENS v. HUGHES* (1885), 1 T. L. R. 415, C. A.

Payment generally, see Sect. 2, ante.

**2558.** — Release of one—Parol variation invalid—Promise to remain liable.]—*Assumpsit* by indorsees against maker of a promissory note. Plea, that the promise was a joint & several one by deft. & A., to whom one of plffs. executed a release under seal. Replication, that the release was executed at the request of deft., who afterwards, & while the note was unpaid, in consideration of such release, ratified his promise, & promised to remain liable to plffs. for the amount of the note:—*Held*: bad, because it set up a parol exception to a release under seal.—*BROOKS v. STUART* (1839), 9 Ad. & El. 854; 1 Per. & Dav. 615; 8 L. J. Q. B. 184; 112 E. R. 1437.

*Annotation*:—*Mentd. Teede v. Johnson* (1856), 11 Exch. 840.

Proviso preserving remedies.]

To an action on a promissory note made by deft. he pleaded that the note was the joint & several note of deft. & C., & that plffs. released C., & thereby also released deft." Plff. replied *non est factum*. In the deed of release there was a that it should not operate to discharge one jointly liable with C. to the debt:—*Held*: the legal operation of the deed was raised by the replication; (2) the proviso qualified the release, & it did not operate to discharge deft.—*NORTH v. WAKEFIELD* (1849), 13 Q. B. 536; 18 L. J. Q. B. 214; 13 L. T. O. S. 115; 13 Jur. 731; 116 E. R.

Ch. D. 46.

**2560.** — —.—Deft. & M. gave plff. their joint & several promissory note to secure a s

15 Dunl. (Ct. of ) 260; So. Jur. 173.—SCOT.

—Held:

makers of a joint & several promissory note was absolutely released by the holder, by an instrument under seal, from liability upon the note, & of ri but the

of ne who seal, to rel rights of

chd: he might v. ROBERTSON (1906), 11 ; 6 O. W. R. 396.—CAN.

of



## PART XIV.—DISCHARGE.

from  
executed a deed of release to M.:—  
release discharged both as to the note.  
NASH (1834), 4 Moo. & S.

Sect. 5,

—Further security granted by one—  
Mortgage with covenant to pay debt.—Remedy not  
co-extensive.]—If one of two makers of a  
joint & several promissory note gives the holder a  
deed of mtge. to secure the amount, with a  
covenant to pay it, the other maker is not thereby  
discharged, for the remedy on the specialty is  
not co-extensive with the remedy on the note.  
—ANSELL v. BAKER (1850), 15 Q. B. 20; 15  
L. T. O. S. 559; 117 E. R. 385.

(1865), 19 C. B. N. S.  
v. Gibbs (1864), 16 C. B. N. S. 527;  
Westmoreland & Blue Slate Co. v. Feilden, (1891)  
3 Ch. 15.

Satisfaction by one.]—An  
between payee & one of several makers of  
joint & several promissory note, that the  
shall take another promissory note in  
of the first, with payment of the note taken by  
the payee on such understanding, amounts to  
payment by the other makers of the joint &  
several note.

A joint & several promissory note had been  
given by deft. & K. to plffs. K. agreed with L.  
& plffs. that plffs. should take L.'s promissory  
note in satisfaction of deft.'s liability on his joint  
& several note. Plffs. having taken L.'s note on  
that understanding, received payment of it from  
R., authorised by L. to pay it. In an action on  
the first note:—*Held*: the above facts might be  
given in evidence under  
by deft.—THORNE v.  
2 L. M. & P. 43; 20 L. J. C. P. 71; 16 L. T. O. S.  
365; 15 Jur. 469; 138 E. R. 261.

Satisfaction generally,

B.

2,

Composition.—G. sued M. to  
a balance due in respect of two unpaid  
of M. & his former partner, H., for  
£249 10s. 1d. & £167 7s. respectively, both of  
which became due in 1870. M. & H. dissolved  
partnership in May, 1870, the latter undertaking  
to pay all debts of the firm & to indemnify M.  
Amongst the liabilities of the firm were the two  
bills which M. & H. had given to G. for goods  
sold, & which G. had got discounted by the  
A. bank. The bills were dishonoured, & H.  
a petition for liquidation under Bkpry.

to  
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a  
his

(1906), 7. 5. 126.—S.

a. —(Giving time to one.)—A  
creditor accepted the separate pro-  
missory note of one of two joint debtors  
on a joint note for an unpaid balance  
of the debt, thereby giving him time.  
The creditor, at the same time,  
declared his intention to hold both  
debtors. The separate note was re-  
newed several times:—*Held*: the  
other joint debtor was not thereby

the other is

17 W. L. R. 816; 71 Man. L. R.  
—CAN.

vers as sureties.)—Plffs.  
sued defts., H., M., & K., as joint makers  
of a note. H. & M. did not appear.  
& judgment was entered by mistake  
against all, but afterwards set aside as  
against H., who pleaded: A mtge.  
given for the same money by M., M. &  
K. being sureties for H.:—*Held*: the  
giving a mtge. by M., one of the two  
sureties, did not of itself discharge H.,  
the other surety.—KIRK v. HARRINGTON  
(1859), 17 U. C. R. 115.—CAN.

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Act, c. 71), s.  
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G. also filed a

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the creditors, by it with  
trustee of

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debtors contained no to A. bank or  
to the two bills, but evidence was that  
M.'s liability in respect of  
from the schedule, were  
considered by the trustee as of no value, & not  
with any intention of reserving to the trustee any  
right of action in respect of them. The bills were  
up by the A. bank to G. in Jan., 1872:—  
the discharge of H. did not release his  
M. from his liability upon the bills.  
v. GRAY, GRAY v. MURRAY (1874),  
L. R. 9 C. P. 216; 43 L. J. C. P. 63; 30 L. T.  
16; 22 W. R. 409.

*Mentd.* Ellis v. Wilnot (1874), L. R. 10 Exch.  
R. v. Grosse (1874), 43 L. J. M. C. 51; *Re Jacobs*,  
Jacobs (1875), 10 Ch. App. 311; *Simpson v. H.*  
J. L. R. 10 Q. B. 496; *Thornton v. Maynard* (L.  
R. 10 C. P. 693; *Société Générale de Paris v.*  
App. Cas. 606.

2564. —Composition as to joint estate.  
Partners jointly & severally liable.]—Plffs.  
the holders of a joint & several promissory  
of deft. & H., sued deft. on the note.  
pleaded that the note was given by him & H. to  
plffs. on account of a partnership debt, & that  
deflt. & H., as partners, being unable

took place under Bkpry. Act, 1869 (c. 71),  
127, & thereupon an extraordinary resolution of  
the creditors of deft. & H. that a composition of  
s. 6d. in the pound, payable by  
in satisfaction

from them to their creditors was passed, that  
provisions of the composition became binding  
on plffs. & on all the creditors of deft. & H., &  
that the debts due to plffs. & to all other  
& were satisfied within ss. 126, 127

of a com  
not  
the plea was  
SIMPSON v. HENNING (1875), L. R. 10  
B. 406; 44 L. J. Q. B. 113; 33 L. T.

C. P. D.

Where one party surety for other parties to note  
. 12,

on

# 392 BILLS OF EXCHANGE, PROMISSORY

## SECT. 10.—BY GIVING TIME TO PRINCIPAL DEBTOR.

### 1.—HOW GIVEN—WHAT TIME.

**2565. General rule—More delay not sufficient.]—**  
*Assumpsit* by payee against acceptor of a bill of exchange for £30. The drawer & acceptor were brothers. When the bill became due, pltf. received of the drawer £3 15s. 4d., & at the same time the indorsement was made on the bill: on account of this bill £3 15s. 4d. remaining £26 4s. 8d. I promise to pay to E. within 3 months from the date of this," & signed by the drawer. The balance was paid, & at the distance of three years, the was brought against the acceptor. Pltf. having been non-suited:—*Held*: laches would not discharge the acceptor. *Semhle*: the question, how far the indorsement necessarily discharged the acceptor, ought to have been left to the jury.—*ELLIS v. GALINDO* (1781), 1 Doug. K. B. 250, n.; 99 E. R. 103.

*Mentd.* Abel v. Sutton (1800), 3 Esp. 108.

—An acceptor of a bill is not discharged by the bill not being presented for payment for three or four years after it becomes due; he is only discharged by payment of the bill, or by a distinct & direct agreement by the holder to discharge him.—*FARQUHAR v. SOU* 2 C. & P. 497; Mood. & M. 14, N. P.

**2567.** —A mere delay by the holder of a bill of to sue the acceptor the or indorsers, the not being suspended.—*PHILPOT v.* (1828), 4 Bing. 717; 1 Moo. & P. 754; L. J. O. S. C. P. 182; 130 E. R. 945.

*Reid.* Oriental Financial Corp'n. v. Overend, Ch. App. 145, n.

**Unless breach of original contract.** To a declaration on a joint & several note given by deft. & E. to pltf., deft. I, on equitable grounds, that he joined in as surety for E., & that, at the time the note was made, pltf., knowing that, agreed with deft., in consideration of his making such surety, that he, pltf., would call in & payment of the note from E. within three

years from the date thereof, which pltf. wholly omitted to do, whereby pltf. lost the means of obtaining payment from E., who had since become insolvent:—*Held*: the plea disclosed a good equitable defence.—*LAWRENCE v. WALMSLEY*, (1862), 12 C. B. N. S. 799; 31 L. J. C. P. 143; 5 L. T. 798; 10 W. R. 344; 142 E. R.

### 2569. — Mere forbearance not

If the holder, after protest for non-payment notice to the drawer, forbear to sue the acceptor, the drawer is not thereby discharged. So after protest only, if the drawer be not entitled to notice. *Secus* before protest, or if the holder take security from the acceptor after protest.—*WALWYN v. ST. QUINTIN* (1797), 1 Bos. & P. 652; 126 E. R. 1115.

*Annotations*:—*Reid.* Jones v. Broadhurst (1850), 9 C. B. 173. *Mentd.* Cory v. Scott (1820), 3 B. & Ald. 819; Kemble v. Mills (1840), 1 Man. & G. 757; Carter v. Flower (1847), 16 M. & W. 743.

### 2570. — Binding agreement necessary.]—

A letter from the holder of a promissory note to deft., the indorser, saying that the maker "is not ready to pay, but will be in a week, which is time enough for us," is not giving time, so as to discharge the indorser.

It was not a binding agreement (*BAYLEY, J.*).—*MAHURSSON v. GOBLE* (1810), 2 Chit. 364; *affg. sub nom.* ARUNDEL BANK v. GOBLE, cited in 4 Bing. at p. 421, N. P.

*Fold.* v. Briant 6 L. J. O. S. C. P.

**2571.** —Where the extrix. of a ceased acceptor verbally promised the holder to pay the bill out of her own private income, & the latter agreed to give her time, provided interest were paid, & forbore to sue:—*Held*: the drawer was not thereby discharged, the promise by the extrix. being void, & the holder being under no binding engagement to give her time.—*PHILPOT v. BRIANT* (1828), 4 Bing. 717; 1 Moo. & P. 754; 6 L. J. O. S. C. P. 182; 130 E. R.

*Reid.* Oriental Financial Corp'n. v. 145, n.

**2572.** —Assumpsit against the maker of a promissory note. Plea, that it was a joint & several note made by deft. & T., & that deft. entered into it at the request of T., & for his accommodation, & in order that he might get it discounted by pltf., that deft. had no other value or consideration for making it, & that he made it as a mere surety for T., of which pltf. had notice, & that, although the note was due in

## XIV. SECT. 10, SUB-SECT. 1.

rule—	maker	at all payment	—A voluntary promise by the holder of a bill of exchange not to sue the acceptor for a certain time, a forbearance to sue for that the
II	Q. R. 1 C. C.	F.	), 2 Jo.
had	III. ————	a pro-note, payable one month after	
	that he had made the note	two other persons; that he	<i>eld</i> : a defence of
of it by	& one of those persons made it as	sureties only for the other; that at the	of time not
ca, of	time it was made by them pltf. were	aware of this, & agreed that they	the
accept	should be sureties only; & that pltf.	had delayed an unreasonable time, viz.	
liability	ten years, to demand payment from	the principal debtor:— <i>Held</i> : a bad	
I.—KAT	defence.— <i>BRISTOL BANKING CO. v.</i>	<i>STANLEY</i> (1867), L. R. 1 C. L. 693.—	
II	IR.		must show
			was then the
			ANK v. JOHN
			126.—CAN.
			2 U. C.



of plff. for 6 months, yet deft. had no notice, till the commencement of the suit, of its non-payment by T., & that plff. gave time for to T., to the prejudice or consent of deft. :—Held : bad.

The plea should have set out some that was binding on plff. All that it states is that he waited 6 months before he commenced his action (LORD AINGER, C.B.).—CLARK v. WILSON (1838), 3 M. & W. 208 ; 150 E. R. 1118.

2573. ———. —A promissory note was made by A. & B., payable to C., to secure advances from C. to A. After the note became due, it was

C. & A., without the privity of B., that A. should execute a warrant of attorney to D., as trustee for C., to secure the amount of the note, & a further advance made by C. to A. :

—Held : the acceptance of the new security by C., unaccompanied by any binding engagement on his part, to give time to A., did not discharge B.

BELL v. BANK (1841), 3 Man. & G. 258 ; Drink water, 236 ; 3 Scott, N. R. 497 ; 3 Jur. 480 ; 133 E. R. 1140 ; sub nom. BELL v. SHUTTLEWORTH, 10 L. J. C. P. 239.

K. B. 139.

2574.

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in order to obtain forbearance for periods of 3 months : —Held : the insufficient to sustain the plea. FUSSEY (1859), 28 L. J. Ex. 132.

Annotations : Ditch. Taylor  
7. Refd.

29 L.  
L. T. 3

2575.

Plffs. lent £1,000 to one of their customers, upon the joint & several promissory

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it that undertaking was not carried out. ntly, in Mar., 1875, an arrangement was into without the knowledge of deft., it was

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than that on which the loan was originally & such higher rate was afterwards debited to B. in his current account. The loan & current account were always kept distinct, & for some months subsequent to the arrangement plffs. always had a balance exceeding £1,400 to credit of B. Plffs. having pressed for of a legal mtge. with the usual power of deft.'s partner, on behalf of & in the name of his a legal mtge. to

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payment 3 months after demand, & a power of sale in case of default. In an action

by B. :—Held : assuming deft.

accepted by plffs. as surety for B., the

of Mar., 1875, did not amount to such

a giving of time to B. as to discharge deft. from his liability on the promissory note.—YOUNG v. CITY

43 L. T. 732

2576. ——— Agreement must be with party to bill—Not with stranger.—To a declaration by

the indorsee of a bill of exchange, alleged to have been indorsed by the drawer to deft., by deft.

to W., & by W. to plff., deft. pleaded that the bill was indorsed by deft. to H. for his

& without , that H. it  
t by , to

in by deft. to H., & by him to W., & that after the bill became due & was dishonoured, plff. & H.

stated an account respecting that & honoured bills, on which H. was liable to

& agreed to take from B. renewed bills in lieu of them, & not to press any parties for payment of

the original bills during the currency of the latter, & averred that the substituted bills were drawn

& delivered to plff. without , & that plff. gav

thereby to the parties in the original bills. At the trial, the agreement alleged in the plea

in substance, but it appeared that H. the bill to W. :—Held : that

ment part of the party liable on the bill,

between plff. & H. was not such a giving of time as to discharge deft., & the

proved, & plff. was entitled to a v. HOLT (1839), 5 M. & W. 250 ; Horn. & H.

41 ; 151 E. R. 107.

v. Jordan

, 8 K. & R.

(1871). L. T. 174.

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to time to the acceptor, in consideration that see the bill paid, & that plff. gave time,

K. plff. discharged deft. from p  
be a party to the

the plea was bad, inasmuch as ment to give time, not being with the principal debtor, but with a stranger, no party to the bill,

and not deft. as surety.—FRAZER v. B. 303 ; 29 L. T. O. 8.

Jur. N

W. R.

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Chit. 125

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10. time to debtor: Sub-  
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had been signed in an action on the bill against a subsequent indorser:—*Held*: the ct. could not interfere to set aside the judgment on that ground, as the judgment could not be affected by such indulgence being given after it was signed.—*BRAY v. MANSON* (1841), 8 M. & W. 608; 10 L. J. Ex. 468; 151 E. R. 1207; *sub nom.* *BRADSHAW v. MANSON*, 5 Jur. 635.

*Annotations*:—*Mentd.* *Baker v. Flower* (1841), 8 M. & W. 670; *Thorne v. Neal* (1842), 2 Q. B. 726; *Andrews v. Briggs* (1850), 4 Exch. 827; *Gowan v. Wright* (1886), 18 Q. B. D. 261.

**2580.** ——— Against both principal debtor & surety.—The rule of law, that time given to a principal debtor discharges a surety, does not apply when the time is given after a judgment for the debt has been recovered by the creditor against both the principal debtor & the surety.—*Re A DEBTOR* (No. 11 of 1913), [1913] 3 K. B. 11; 82 L. J. K. B. 907; 109 L. T. 323; 20 C. 119, D. C.

**2581.** ——— Time must be given before action brought.—*Cognovit*.—*Semble*: taking a *cognovit* of the acceptor of a bill after an action brought against him, & by that giving him three weeks' time before entering up judgment, is not such a giving time as will discharge the other parties to the bill.

Is there any decision which lays down, that if after action brought the party take a *cognovit*, that is a giving of time? I am of opinion that it is no answer to this action (*ANNOTT, C.J.*).—*JAY v. WARREN* (1824), 1 C. & P. 532, N. P.

*Reid*. *Isaac v. Daniel* (1846), 15 L. J. Q. B.

#### Warrant of attorney.]

of dishonoured by the acceptor, of the dishonour was given to the & the indorsee having commenced actions by original against the acceptor, & a prior indorser, afterwards took from the acceptor a warrant of attorney for the debt & costs, payable by instalments, the last of the instalments being payable before the time when in the ordinary course he could have obtained the acceptor:—*Held*: in the the indorser, the taking the warrant of attorney from the acceptor being a matter after the commencement of the action, it no bar to the action generally, & it was not available in evidence under the general issue. ∴ whether the taking of the warrant of attorney the acceptor was, in the circumstances, a of time so as to discharge the the bill.—*LEE v. LEVY* (1826), 4

6 Dow. & Ry. K. B. 475; 3 L. J. O. S. K. B. 251; 107 E. R. 1104.

*Annotation*:—*Reid*. *Blogg v. Bousquet* (1848), 6 C. B. 75.

**2583.** ———.—It is no defence to an action by holder against drawer, that time has been given to the acceptor since the commencement of the action.—*PIKE v. SWEET* (1828), Dan. & L. 159, N. P.

*Mentd.* *Foster v. Jolly* (1835), 1 Cr. M. & R. 469; *Abrey v. Crux* (1869), L. R. 5 C. P. 37; *Henry v.* [?], 39 Sol. Jo. 559.

**2584.** What amounts to giving time.—Taking part payment—& new acceptance.—If the holder of a bill of exchange when due, after taking part payment from the acceptor, agree to take a new acceptance from him for the remainder, payable at a future date, & that in the meantime the holder shall keep the original bill in his hands as a security, such agreement amounts to giving time & a new credit to the acceptor, & discharges the indorser, who was no party to such agreement, though the drawer might have had no effects in the hands of the acceptor.—*GOULD v.* (1807), 8 East, 576; 103 E. R. 403.

*Annotation*:—*Reid*. *Goldfarb v. Bartlett & Kremer*, [?], 1 K. B.

With offer to take security for residue.—Offer not accepted.—If after a bill of exchange has been dishonoured & notice of dishonour duly given, the holder takes part of the amount of the acceptor, & offers to take a warrant of attorney to secure payment of the residue by instalments, which offer is not accepted, this is not such a giving of time to the acceptor as will discharge the drawer; but if the holder had disabled himself from suing on the bill, it is otherwise.—*HEWET v. GOODRICK* (1826), 2 C. & P. 468, N. P.

**2586.** ——— Taking new bill.—A., the payee of a bill of exchange for £87, having indorsed it to B. for valuable consideration, & the bill having been dishonoured, C., the acceptor, sent another bill for £126, which had some time to run, to A., who took up the first bill by means of the second, received the difference in discount, & indorsed the first bill again to D., who sued the drawer before C.'s second bill became due:—*Held*: taking the second bill did not amount to giving time & a new credit to the acceptor of the first, so as to discharge the drawer, who was no party to the transaction, unless there was evidence of an express consent on the part of A., the payee, to give time, & not to sue upon the first bill until the second was at maturity.—*PRING v. CLARKSON* (1822), 1 B. & C. 14; 2 Dow. & Ry. K. B. 78; 1 L. J. O. S. K. B. 24; 107 E. R. 6.

*Reid*. *Oriental Financial Corp. v.* [?], 7 Ch. App. 145, n.

An of CAN. falls 27 S. C. a joint & note made by defts. W. that W. was surety for by the giving of of & was to the was as to whether the been accepted in of the original note was At the trial the jury found for plff. On an application for a new trial he R. A. R. CAN. R. for ; 2506 M.



Aug. 11, 1913, & drawn by a consisting of two partners, B. & K., upon & accepted by a French co., was indorsed to plffs. by the two partners on Aug. 21, in payment of a previously dishonoured bill. On Aug. 27, shortly after the bill of Aug. 11 was given to plffs., the partnership between B. & K. was dissolved; the assets thereafter belonged to B., who carried on the business in the firm name, B. covenanting with K. to discharge all the debts & liabilities of the firm. Notice of the dissolution & of the fact that B. would discharge the liabilities of the firm was given to plffs. The bill became due on Oct. 11, 1913, but shortly before that date B. gave to plffs. another bill dated Oct. 1, & payable upon Oct. 31, drawn in the firm name upon & accepted by the same French co., for an amount exceeding the amount of the bill of Aug. 11, & at the same time B. asked plffs. not to present the bill of Aug. 11 for payment. The bill of Aug. 11 was notwithstanding presented for payment & dishonoured, & notice of dishonour was given by plffs. to B. The bill of Oct. 1, was also not paid, but it was not noted or protested, & no notice of dishonour was given to either B. or K. Plffs. sued K. upon the bill of Aug. 11, upon the consideration for the bill:—  
 was not liable on the bill, inasmuch as by the terms of the dissolution of partnership, by notice to plffs. he had ceased to be a principal debtor, & had become a surety only, & had been discharged through plffs. giving time to B. by taking the bill of Oct. 1 in lieu of payment of the bill of Aug. 11.—*GOLDFARB v. BARTLETT & KREMER*, [1920] 1 K. B. 639; 80 L. J. K. B. 258; 122 L. T. 588; 64 Sol. Jo. 210.

2588. — Taking cognovit.]—In an by payee against maker of a promissory note, plff. proved a joint & several note made by deft. & another person. Deft. then proved that he was a mere surety, having become a party to the at the request of the other person, who was inde to plff., & that the note not having been paid it became due, plff., in Hilary term, 1828, brought an action against the principal, which being about to be tried at the Spring Assizes, 1828, plff. took a cognovit for the debt, payable by three instalments, the first on Apr. 28, the others in May & June, but if deft. failed in payment of any of instalments, plff. was to be at liberty immediately to enter up judgment, & issue execution for the whole sum. The first instalment was not duly paid:—*Held*: as plff., if he had proceeded in the action, could not have obtained judgment & issued execution before Apr. 28, which was the fifth day of Easter term, plff. did not, by taking the cognovit, give any time to the principal debtor. *v. EDMUNDS* (1829), 10 B. & C. 578;

381.—CAN.

to join him in one of got his with of note which a blank form afterwards filled in & handed to This note was subsequently in similar form.

by

JAMES B. SPARROW (1893), 1 TOTT. L. R.

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& Webb, 87; Man. & Ry. K. B. 287; 8 L. J. O. S. K. B. ; 109 E.

*Annotations*:—*Dodd*, Isaac v. Daniel (1846), 6 Q. B. 309. *Held*, Blagg v. Bouquet (1846), 6 Q. B. 75. *Mond*, Haller v. Eyre (1842), 9 Cl. & Fin. 1; Abbot v. Hendricks (1860), 2 Scott, N. R. 183.

**Stay of proceedings—On payment at future date.**]—To an action against the drawer of a bill:—*Held*: it was no defence that plff., the commencement of that suit, had con- to a judge's order in an action brought by him against the acceptor, that upon payment of the principal & interest on a certain future day, all further proceedings should be stayed, & judgment, if not appearing that such was posterior to that on which judgment have been obtained in the action against the

I do not see that any time was given. The action was going on (*CHESWILL, J.*).—*KENNARD v. KNOTT* (1842), 4 Man. & G. 474; 5 Scott, N. R. 247; 11 L. J. C. P. 314; 134 E. R.

**Order not amounting absolute stay.**]—To an action by indorsee against indorser of a bill of exchange, deft. pleaded, that in a previous action against the drawer of a a judge's order had been made, without the sent of deft., that upon the payment of the debt & costs within 1 month, all further proceedings should be stayed, & averring that plff. might have judgment & issued execution before the of the month, had not the order been made:—*Held*: insufficient, as not showing that any time had been given to the drawer.—*MICHAEL v. MYKUS* (1843), 6 Man. & G. 702; 1 Dow. & L. 702; 7 Scott, N. R. 444; 13 L. J. C. P. 14; 7 Jur. 1150; 134 E. R. 1075.

8 L. T. O. R.  
W.

2591. — Postponing judgment—Plead- ing.]—To an action on a bill of exchange by indorsee against drawer, deft. pleaded drawee accepted, & plff. afterwards drawee on the bill, & while that suit in consideration of £2, agreed with that plff. should stay all further proceedings & forbear continuing to sue, for 2 months, during which time plff. could have continued further proceedings, which agreement was without the drawer's consent, & that, in pursuance of the agreement, & without the drawer's consent, plff. did stay all further proceedings & taining to sue the drawee:—*Held*: a though it did not expressly aver that the

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&amp; deft.

Med. 172.

10. — *By giving time to principal debtor:*  
*sect. 1.]*

the issue on his part by merely proving the agreement, & p[er]s. was not entitled to show, in answer, that judgment could not have been obtained earlier than the time until which he had agreed to forbear.—*LEAHY v. DANIEL* (1846), 8 Q. B. 800; 15 L. J. Q. B. 140; 6 L. T. O. S. 98, 308; 115 E. R. 904.

2592. — Forbearance pending endeavour to procure new bill. — In *assumpsit* by indorsee of a bill of exchange against the extrix. of drawer, it was pleaded that pltf. being holder of the bill when overdue, without the authority of the drawer, agreed with the acceptor, that, in consideration that he, the acceptor, would for a reasonable time, to wit, for 1 month, use his best endeavours to procure a new & approved negotiable bill of exchange to be taken by him, pltf., if satisfactory to him, in lieu & substitution & for & on account of the overdue bill, he, pltf., would for & during that period forbear enforcing payment from the acceptor; — *Held*: sufficient on general demurrer, as showing a binding agreement to give time to the acceptor, & the drawer was discharged. —

v. HALL (1830), 5 Exch. 46; 19 L. J. Ex. 205  
E. R. 20.

Conrad, Frazier v. Jordan (1937), 8 E. & H.

**Liquidation of debt by debtor building ships Debt to be secured meanwhile.**—Indorsees of bills of exchange, as a security for a floating balance due on the accounts between them & the drawer, had notice that the acceptor was a surety for the drawer. They afterwards entered into an agreement with the latter that the existing debt should be liquidated by the drawer building for them certain ships, & should, in the meantime, be secured by a policy of assurance :—*Held* : time

thus given to the principal debtor & the  
y was released in equity, if not at law

DEB P. STAINBANK (1854), 6 Do G. M. & G.  
E. R. 1307, L. JJ.

r. Harradine (1837), 7 E. & H.

old. Strong v. Foster (1855), 17 C. B. 201; Or  
Corp'n. v. Overend, Gurney (1871), 7 Ch.  
House v. Bradford Banking Co., [1894] 2 Ch. 3

Thornston  
J. I. H.  
Banking Co. v. Hawkins

I Now  
Duncan,  
App. Cas. 1  
16 T. L. R. 317.

16; Wake

----- from applying funds in discharge of note. — To an action on a joint & several promissory note of deft. & S., payable to plffs. at 6 months after date, deft. pleaded, by way of equitable defence, that he made the note at the request & as surety for S., to secure a debt due from S. to plffs., a banking co., & without value, that plffs. took the note from deft. as surety only, that plffs., whilst holders of the note, without the knowledge or consent of deft., for a good & valuable consideration, gave S. time for

of the e, & forbore to enforce payment thereof, that they could & might & ought to have obtained payment from B. had they required it, & not given him time for the payment, & that debt. had been & was by means of the premises damaged:—*Held*: proof that plffs. had funds to the credit of the principal debtor shortly after the note became due, & had abstained from applying those funds in discharge of the note, or from com- to debt. for three years the fact that the note remained unpaid, did not sustain the equitable defence set up by the plea.—*STRONG v. FOSTER* (1855), 17 C. B. 201; 25 L. J. C. P. 106; 1 W. R. 151; 139 E. R. 1047.

**Annotations:—**Coned. Pooley v. Harradine (1857), 7 E. & B. 431. **Exchd.** Mutual Loan Fund Assocn. v. Sudlow (1858), 5 C. B. N. S. 449. **Distd.** Greenough v. McClelland (1860), 6 Jur. N. S. 772. **Reid.** Wright v. Sanders (1837), 39 L. T. O. N. 175; Bailey v. Edwards (1864), 4 B. & S. 761; Ewin v. Lancaster (1865), 6 B. & S. 571; York City & County Banking (v. r. Bainbridge (1880), 43 L. T. 732. **Mentd.** Fraser v. Jordan (1857), 8 E. & B.

2595. — Execution of Inspectorship deed.—In force for two years.]—In an action by indorsees against acceptor of a bill of exchange, it was proved that deft. had accepted the bill for the accommodation of P. & Co. the drawers, & that afterwards & whilst the bill was held by plffs., P. & Co. had, without the knowledge of deft., entered into a deed of arrangement, & Inspectorship with plffs. & other creditors, by which P. & Co. bound themselves to carry on their business under Inspectorship, & to pay to plffs. the whole debt due to them by instalments. Plffs. on their part bound themselves "not to enforce claims against any parties to the bills in their hands who as between themselves & P. & Co. were not then liable on such bills respectively," provided that the rights of plffs. against all parties to bills in their hands should be in no way prejudiced in the event of the proposals made by P. & Co. not being fully carried into effect. The deed further declared that nothing therein contained should prevent any executing creditor, other than as provided for in the above covenants & proviso, from suing any person, other than P. & Co., who might be liable to such creditor as drawers, indorsees or acceptors of any bill, note, etc. Plffs. had no express notice that deft. was an accommodation acceptor upon the particular bill. The deed remained in full force during two years, & at the expiration of that period P. & Co. made default in payment of the instalments to plffs., who then brought their action against deft. At the trial a verdict was entered for deft. upon a plea setting up the above facts as a defence upon equitable grounds. Upon a rule to enter a verdict for plffs. upon the plea, with leave to the ct. to amend:—*Held*: (1) plffs. must be taken to have had express notice, at the time of executing the deed, that the bill was, as deft. & P. & Co. an accommodation bill; the deed contained no valid reservation of plffs.' rights against deft.; (3) the effect of the

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to give time to P. & Co. during the two of the inspectorship & thereby to discharge deft., who was their surety on the bill.—**BAILEY v. EDWARDS** (1864), 4 B. & S. 761; 3 New Rep. 377; 34 L. J. Q. B. 41; 9 L. T. 646; 30 J. P. 790; 11 Jur. N. S. 134; 12 W. R. 337; 122 E. R.

571. **Field, Ewin v. Ridd, Oriental Film** (1865), 1 & S. 16. **PP. 115, B** (1878), 11 (1879), L. R. 7 Q. B.

**2596. — Agreement not to** at Bombay having consigned goods to merchants in England, drew on them for £1,200, & insured the goods for £1,700. He sold the draft to deft., a bank, & handed them at the same time the policy of insurance & the bills of lading, with a letter of hypothecation signed by him. The ship burnt at sea & the cargo lost. The draft for duly accepted, but the acceptors dishonoured at maturity. The bank out of t which had been paid to them by the & had a balance in t been claimed by plifs., who as for value of it from the shipper, the bank claimed it as a collateral security for a debt due to them from the shipper on another account. He had shipped goods to other consignees & had drawn against the goods bills, which were also in the hands of the same bank. A due, the drawers had requested the bank to of the bills. The bills had not el, but the goods had been sold at a e bank had re-drawn upon the shipper for deficiency, but he had failed: - having, at the request of the from presenting the bills, had them time, & had thus released the drawer, & the shipper was not indebted to the bank on that account, & plifs. were entitled to the surplus in the hands of the bank.—**LATHAM v.**

to be secured by debtor amount in et. by within such further time as the should allow. This from time to time the et. with the of the notes. In In plifs. K., has with K. to

on did BANK v. 26 L. T. 73. K. H. be plif

in An was for B a B past really for that as of O. W. R.

Agreement to hold over at in case makers should

**BANK OF INDIA** (1874), L. R. 17 Eq. 205; 43 L. T. 793; 2 Asp. M. L.

of execution on of book debts.—Plifs. were the indorsees of of exchange, drawn by D., & accepted by F. bill having been dishonoured at maturity, an

plifs. & F. that the draw from possession, on a deed of certain book debts belonging to l in favour of plifs. The that, on punctual & due payment of £32, by instal-

to F. No notice of the deed was Held: plifs. had given an extension of time by of the above arrangement to F., without the of D., who, as drawer of the bill, stood in of a T. L. R. 2

**2598. — Agreement for payment by instalments—Coupled with conditions imposing tions on debtor.**—Deft. & A. signed a promissory note in consideration of an to the latter. Plifs. afterwards obtained alnst A. for the balance due on the note & for a sum for goods sold & delivered. On the same day an A. was to pay £10 a monthly thereafter, & to pay cash for any their claim. The arrangement was not

con- & it was relieved from liability on the note.—**BELLINGHAM & CO., LTD. v. HURLEY** (1908), *Times*, April 4th, C. A.

Effect of reservation of rights.—See Sect. 4.

in on to I B. H. CAN.

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10. giving to principal debtor: Sub-

2.—EFFECT OF GIVING TIME.

A. As regards Instruments not being Accommodated Instruments.

**2599. To acceptor—Whether drawer discharged.**—In an action by indorsee against drawer of a bill of exchange, it appeared the bill was payable May 11, that upon a promise of payment the indorsee gave the acceptor to the 18th, from thence to 20th, thence to 24th, & from thence to June 7, when the acceptor failed. There being no notice to the drawer:—*Held*: it was the loss of the indorsee. —*QUEE v. BROWN* (1727), 2 Stra. 702; 93 E. R. 851.

**2600. Whether indorser discharged.**—If the holder give time to the acceptor of a bill, or drawer of a note, after it has been dishonoured, the indorser is discharged. —*TINDAL v. BROWN* (1786), 1 Term Rep. 167; 99 E. R. 1033; *affd.* (1787), 2 Term Rep. 186, Ex. Ch.

*Annotat.* *Consid. &c. p. Barclay* (1802), 7 Ves. 507. *Reid. King v. Bickley* (1812), 2 Q. B. 419; *Duncan, Fox v. North & South Wales Bank* (1880), 6 App. Cas. 1. *Mentid. Bickerdike v. Holliman* (1786), 1 Term Rep. 405; *Brown v. Harradon* (1791), 4 Term Rep. 145; *Hopew v. Alder* (1799), 6 East, 10; *Haynes v. Bicks* (1801), 2 Bos. & P. 399; *Darbishire v. Parker* (1805), 6 East, 3; *Estelle v. Sawyerby* (1809), 11 East, 111; *Stevens v. Aldridge* (1815), 5 Price, 334; *Williams v. Smith* (1819), 2 B. & Ald. 496; *Philpot v. Briant* (1828), 4 Bing. 717;

PART XIV. SECT. 10, SUB-SECT. 2.

A. To maker } In an on a  
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of  
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for  
not to  
but only a matter for  
1. STEVENSON v. K  
71, 4 F. L. R. 315. CAN.

1. To acceptor or  
the drawer & acceptor, at the  
of an onerous indorse  
at the request of the accept  
it by granting his own bill at  
but stipulated for an assignat  
bill & diligence:—*Held*: he had re-

bill,  
that this was not barred by the  
of the original bill being allowed time,  
till the new bill fell due, to provide  
for retiring the original one,  
any communication with

1 Will. & S. 11  
436. SCOT.

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CAN.

on after its maturity, B. having in  
the meantime gone into insolvency:—*Held*: It was immaterial whether plff.  
a bond fide holder, or not: he had  
to the maker, which was  
the rights of the  
r. WYATT (1877), 2  
Dig. 112.—CAN.

for the price of  
purchased from him, which note plff.  
discounted for debt., who received the

It was renewed by H., & the new  
indorsed by plff.:—*Held*: this  
only an extension of the time for  
& did not alter the ori  
y of debt., as indorser.—C

CAN.

—A., held  
by debt., agreed with the  
pon payment of an extra  
of interest he would take  
per date: all the  
83 was paid. The

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of interest. of  
note of maker of  
Upon an action  
against the of  
—*Held*: he

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CAN.

the makers & indorsers of a  
note, the indorser pleaded that it  
agreed between plff. & the makers,  
their president, without the consent or  
of the indorser, that  
makers time for  
in consideration of  
at 14 per cent. which the  
by their president, agreed to

CAN.

of

(1833), 1 Cr. & M. 735; *Solarte v. Palmer* (1834), 8 Bill. N. 9. 874; *Chapman v. Keane* (1835), 3 Ad. & El. 193; *Hedger v. Stevenson* (1837), 3 M. & W. 116; *Brown v. Brown* (1838), 4 Bing. N. C. 268; *Furze v. (1842)*, 3 Gal. & Dav. 116; *Caunt v. Thompson*, 7 C. B.

**2601. — Drawer leaving no effects in acceptor's hands.**—*GOULD v. ROBSON*, No. 2584, ante.

**2602. — Whether subsequent indorser discharged.**—Where all parties have had due notice of the dishonour of a bill of exchange, a subsequent indorser is not discharged by a treaty between the attorney of the holder, the drawer, who was also prior indorser, & the acceptor, that the holder should wait a given time for payment of the balance, in consideration of receiving from the acceptor & prior indorser, by a certain time, a stipulated proportion of the amount, a part only of which proportion was afterwards paid, although the subsequent indorser has had no notice of such treaty or the result, nor was informed of the payment of any part of the money due on the bill or of the ultimate non-payment of the balance till some months after the original dishonour of the bill, the subsequent indorser being the person to whom the holders had sold the goods for which the bill was given in payment, & the offer of a renewed bill, by the same parties, having expressly rejected by them.—*BADNALL v. (1817)*, 3 Price, 521; 146 E. R. 340.

made with the maker, without the knowledge or consent of the indorser, to extend the time for payment to a fixed date, & accept in full satisfaction a compromise if paid at the date fixed, discharges the indorser, although the compromise is not paid, & it is expressly agreed that in that event the holder's rights against all parties should be preserved.—*FLEMING v. McLEOD* (1906), 2 E. L. R. 140; 37 N. H. R. 630; *revid.* 39 A. C. R. 290.—CAN.

**2600 vi. — Judgment & execution against maker & indorser.**—The holder of a note sued maker & indorser, and after execution placed in the sheriff's hands against both, plff., upon the application of the maker, extended the time for payment of the amount, without the consent of the indorser:—*Held*: a discharge of the indorser.—*VAN INET v. MILLER* (1856), 5 Gr. CAN.

**2600 vii. —** *Indorser.*—If the holder of a promissory note grants an extension of time for payment at maturity, without obtaining the assent of the accommodation indorsers to the extension, or reserving his rights against them as sureties, they are relieved from liability.—*W & WICKWIRE v. PARSONS & (1914)*, 20 B. C. R. 485.—CAN.

—*Held*: acceptance of in- from the of a note after maturity to only.

v. McKERRAL (1888), 15 O. R.

Part

of an e of time given to  
Q. R. 27 S. C. 136.—CAN.



## PART XIV.—DISCHARGE.

**I. By indorser to payee—Whether drawer**  
**—Time given by an indorsee to the**  
**payee does not discharge the drawer.**—CLARIDON  
*v.* DALTON (1815), 4 M. & S. 226; 105 E. R. 818.

given, without his consent, to  
 drawer by the indorsee, who knew that it  
 for

& Ins. R. 156.

**2804. To second indorser being drawer—**  
**Whether first indorser discharged.**—J. S. drew a  
 bill of exchange & indorsed it to deft., who  
 it to J. who again indorsed it to plff.:—*Held*:  
 time given by plff. to J. with a knowledge that J.  
 was drawer as well as second indorser, discharged  
 deft. from liability on the bill.—HALL *v.* COLE  
 (1836), 4 Ad. & El. 577; 1 Har. & W. 722; 6  
 Nev. & M. K. B. 121; 5 L. J. K. B. 100; 111  
 E. R. 901.

of a bill  
 of  
 by time given to the  
 (1813), 4 Taunt. 730; 128 E. R. 517.

**2808. ——— Effect of knowledge that bill**  
**accommodation bill.**—If the holder of a bill of  
 for

a from the drawer for  
 the , at time of  
 the bill, knew it was an accommodation bill  
 or (1813), 5 Taunt.  
 14; 128 E. R. 660.

Accommodation bills generally, see Sect. 2,  
 & Part X.

Bank of Ireland *v.* Borsford  
*v.* Edmunds (1830), 10 B. & C.  
 111; 118 E. R. 46  
 Manley *v.* Borsford (1853), 2 E. & B. 46

**2805. To drawer—Whether acceptor discharged.**  
 If the indorsee of a bill of exchange, having  
 notice that it was accepted without consideration,  
 & part payment from the drawer & give him  
 time to pay the residue, he thereby the  
 acceptor.—LAXTON *v.* PEAT (1809), 2  
 N. P.

Re 10  
 33, 1 Bankr. & Ins. R. 156.  
 1 L. J. C. P. 162;  
 R. 512; Ewin.

Distd. Kerrison <i>v.</i>	Camp 730	Consd.
E & H 431	E. Harradine nds (1) B. & Ad.	1 E. & B. 1 C.
L. T. O.		

for value, who receives p from the  
 drawer of an accommodation bill, & a new  
 live time for the payment of t  
 not

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 if he knew that fact, it would make any  
 C. WYATT (1831), 5 C. & P. 181, N. P.

**2806. ———**  
 dation bill due, it was for  
 payment to the acceptor pay  
 it:—*Held*: he was not by time being

H. accepted a bill for  
 the accommodation of H., the drawer, who in-  
 it over as security for a debt, & afterwards

maker	first	which	by
		prtr	given t
		not	(1813), 5 Taunt.
(1876), 21 L. C. J. 96	—CAN.		R. (H. L.)

to a bill 13 L. C. L. ; 14 E.

a bill  
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The bill was several times  
 in M. on 1  
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W. in R.

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had  
 1 L. R. 506; 2 Ir. Jur.

PART XIV. SECT. 10.

On action  
 1874,

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 At this time  
 of the agreement between W. & H.  
 or

A.

of until J.

Deft.  
 took  
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to M. in  
 unless M.'s arrangements were

he  
 of plff.  
 payment of 5400  
 Ha. of Cal  
 46 O. L. R. 573; 17  
 CAN.

plff.'s  
 AL deeds as n  
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he  
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that deft. was an  
 HANSON *v.*  
 9 C. L. 106; 1 L. R.

the

C.

# 400 BILLS OF EXCHANGE, PROMISSORY

1. 10.—By giving time to principal  
2, B.; sub-sect. 3. Sect. 11.

bkpt. The indorsee entered into an agreement with the assignee, for purchasing part of bkpt.'s property, & for the arrangement of some claims which he, the indorsee, had upon the estate, & he afterwards gave them a release of all demands,

of the bill, which had been dishonoured. at the time of the agreement, but not when he took the bill, that it was accepted for accommodation: notwithstanding the above acceptor was still liable at the suit of

—HARRISON v.  
3 H. & Ad. 36; 110 E. R. 14.

Annotations:—Appl. Smith v. James (1852), 2 E. & B. 102. Re Black & Cope, Ex p. Frew (1853), 1 Bankr. & Ins. R. 156.

2611. ———.—BAILEY v. EDWARDS,  
No. 2595,

1. To acceptor.—Whether drawer discharged.]  
drawer of an accommodation bill is not discharged by time being given to the acceptor.—  
COLLOTT v. HAIGH (1812), 3 Camp. 281, N. P.

Annotations:—Consol. Fenton v. Pomeroy (1813), 3 Taunt. 192. Reid. Price v. Edmunds (1830), 10 B. & C. 578.

2612. Bill for acceptor's benefit.]  
time of an a

1 for his the  
in an action b the but it is  
be where the action is brought against the  
for whom the bill is drawn.—HILL v. READ  
Ry. N. P.

2614. To one joint maker.—Holder with notice that other joint maker surety only.—Whether surety discharged.]—Declaration upon a promissory note, made by deft., for payment to pltf. of 1 month after. Plea, that the promissory note was made by deft., jointly with J., deft. & J. jointly & severally promised to pltf. the amount of the note, that deft. never or received any consideration for his making note, but that same was made by him as surety for J., that, after the note became due, it was pltf. without the of

deft., that time

without the consent of deft.:—Held: judgment must be for pltf.—  
on v. JAMES ( ), 2 E. & B. 50, n.;

1119, n.; 118 E. R. 687.

Re Black & Cope, Ex p. Frew (1853), 1 Bankr. & Ins. R.

2615. To person not party to bill.—Holder with notice that such person was real principal.—Whether acceptor discharged.]—If, after a right of action accrues to a creditor against two or more persons, is informed that one of them is a surety only, & after that, he gives time to the principal debtor, without the consent & knowledge of the surety, the rule as to the discharge of the surety applies.

H. brought to O. & G., a discount co., certain bills, which bore on them the acceptances of the F. Co. H. was in fact the agent of the A. & G. W. Co., an American co., & he & the American co. had obtained the acceptances for their own accommodation, & on payment of a commission in respect of such acceptances. The bills were not paid, but renewed. H. gave the O. & G. Co. his own guarantee & that of the American co. that the renewed bills should be paid at maturity. The renewed bills were not paid. The O. & G. Co. gave, on Apr. 8, 1866, notice of dishonour to all the parties whose names were on the bills. On Apr. 9 the solr. of the F. Co. gave full information to the O. & G. Co. that H. was the real principal on the bills, which had been accepted by the F. Co. merely for his accommodation. The manager of the O. & G. Co. said he should see H. in the afternoon. H. afterwards gave, as collateral security, to the O. & G. Co. bills to a much larger amount, drawn on L., & the O. & G. Co. entered into an arrangement with H. not to sue on the old bills if the bills on L. should be paid. Nothing farther was done in the matter for some months. The last bills were not paid, & the O. & G. Co. afterwards brought an action against the F. Co. to recover the amount of the bills originally accepted by the F. Co. The F. Co. filed a bill to restrain the action:—Held: in all the circumstances, the action must be restrained, for the O. & G. Co.,

1. To acceptor.—M. to them in by him, & drawn & by L. The bill not drawn,

transmitted to A. still the former bill. The new dishonour intimated. continued

without cancelling or prior bills. Upon A. L. payment of the second bill, L. that A. had lost recourse to the him: it the A. in by of

the moment he be the in favour of or as

If he sec time the other 898), O. R. 2614 I. To maker—Holder

D. note as of pltf. knew at that the time of was Pltf. as a new the note with his security for his & the D.

that the time was extended for K.'s

or that K. of them he in which to not released by the to 2 months Held: D. extension of R.

2614 II. ———.—Subsequent renewal by other joint maker only.]—A married in blank, & gave

it to her son "to be as he liked." He filed it up for \$1,200, & ed it, & it to pltf., who was not aware of the which it had been signed. It was renewed twice without the woman's name, the original note remaining in pltf.'s hands:—Held: she had been discharged the extension of the time of DEVANNEY v. A. R. 335

b. To ———.—The li of with knowledge that the maker was an accommodation maker only time —Held: the maker was discharged. BANK OF UTAH 15 C. P. —CAN.

c. ———.—IN AN ACTION on a note made by deft. & indorsed by one M. to pltf., deft. pleaded, on equitable grounds, that he was surety for M., & made the note for his benefit without value, of which pltf. became aware after they became the holders thereof, & after notice time to M., & thereby On demurrer:—Held: the





# 402 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

11.—By renewal of instrument or by taking fresh bill

**Second bill not paid—First bill not delivered up.**—Bills, in lieu of which other bills are given, if permitted to remain with the holder, & the latter bills are not paid, may be enforced.—*Ex p. BARCLAY* (1802), 7 Ves. 597; 32 E. R. 240, L. C.

**Held.** *Nash v. De Freville*, (1900) 2 Q. B. 72, L. & EL. 193.

**2624.** ——— **Omission to give notice of dishonour.**—Deft., being unable to pay a bill when due, which he had accepted, obtained time, & indorsed to plff. as a security a bill drawn by himself to his own order, which, when due, was dishonoured by the drawee, but the holder omitted to give deft. notice:—**Held:** by such laches deft. was not only discharged as indorser of the one bill, but also as acceptor of the other.—*BRIDGES v. BERRY* (1810), 3 Taunt. 130; 128 E. R. 51.

**Idem.** *Conrad. Weir v. Prosser v. Evans*, (1894) 2 Q. B. 229.  
**Held.** *Cambefort v. Chapman* (1887), 19 Q. B. D. 229.

**2625.** ——— **A bill of** dated Aug. 11, 1913, & drawn by a firm consisting of two partners, B. & K., upon & accepted by a French co., was indorsed to plff. by the two partners on Aug. 21, in payment of a previously dishonoured bill. On Aug. 27, shortly after the bill of Aug. 11 was given to plffs., the firm B. & K. was dissolved; the bill belonged to B., who carried on the firm in the firm name, B. covenanting with K. to discharge all the debts & liabilities of the firm of the dissolution & of the fact that B. would discharge the liabilities of the firm was given to plffs. The bill became due on Oct. 11, 1913, but shortly before that date B. gave to plffs. another bill dated Oct. 1, & payable upon Oct. 31, drawn in the firm name upon & accepted by the same French co., for an amount exceeding the amount of the bill of Aug. 11, & at the same time B. asked plffs. not to present the bill of Aug. 11 for payment. The bill of Aug. 11 was notwithstanding presented for payment & dishonoured, & notice of dishonour was given by plffs. to B. The bill of Oct. 1 was also not paid, but it was not protested, & no notice of dishonour was given to B. or K. Plffs. sued K. upon

bill of Aug. 11, & alternatively upon the consideration for the bill:—**Held:** K. was not liable on the bill, inasmuch as by the terms of the dissolution of partnership & by the notice to plffs. he had ceased to be a principal debtor, & had become a surety only, & had been discharged from liability in respect of the bill of Aug. 11, & also in respect of the consideration therefor, by reason of plffs.' failure to take the proper steps to enable them to realise their security under the bill of Oct. 1.—*GOLDFARB v. BARTLETT & KREMER*, [1920] 1 K. B. 639; 89 L. J. K. B. 258; 122 L. T. 588; 64 Sol. Jo. 210.

Effect of omission to give notice of dishonour generally, see Part XII., Sect. 4, sub-sect. 9, *ante*.

**2626.** ——— **Amount tendered day after maturity—No demand by holder for payment.**—Deft. being indebted to plff., gave him a promissory note for £45, which was dishonoured. The latter afterwards agreed to accept 5s. in the pound, to be secured by an acceptance of a bill for £11 5s. by deft.'s brother, which was given, but the original note remained in plff.'s possession, & was to revive if the acceptance were not honoured. The bill was not paid the day it became due, but on the following morning deft. tendered £12 to plff., including its amount & expenses thereon, which the latter refused to accept, & brought an action on the original note:—**Held:** he was not entitled to recover.

Plff. consented to take this composition bill in lieu of the original note, & having so done, the former instrument became subject to the law applicable to bills of exchange, & it was necessary for payment to have been demanded from deft., as in ordinary cases. He had no claim without having previously demanded payment, & as it was not proved that such demand was duly made, he cannot now be let in to sue for his original debt (*GIBBS, C.J.*).—*SOWARD v. PALMER* (1818), 2 Moore, C. P. 274; 8 Taunt. 277; 129 E. R. 390.

**Idem.** *Goldfarb v. Bartlett & Kremer*, [1920] 1 K. B. 639; 89 L. J. K. B. 258; 122 L. T. 588; 64 Sol. Jo. 210.

**2627.** ——— **Renewal on terms—Terms not carried out.**—An action having been brought against the acceptor of a bill of exchange, it was agreed between the parties that deft. should pay the costs, renew

bill not delivered up.  
NORTH AMERICA  
H. de J. 334. CAN.

2623

of B. & M. plff. family a sum of CAN.

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took a joint note for \$4,981.94  
y intention of waiving any of his  
the agreement. At the  
he note, M. was ready to  
his share of one-half, but B. was  
in funds. The  
raised by means of the discount of

to B.  
the purpose of paying the note,  
had been placed by plff. in a  
cor's hands. B. proposed to the

1. ——— *Eri*  
papers.)—Defta.  
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# XIV. --DISCHARGE.

bill, & give a warrant of debt. Deft. gave the warrant, & renewed the bill, but did not  
*Held*: pltf. might bring a fresh bill, while the second was in the hands of an attorney, & the costs:—  
 NORRIS v. AYLETT (1809).

— *Held*. Atherton v. Heard (1844), 8 Jur. 733.

— **Second bill paid.**—Deft. being indebted to pltf. on a bill of exchange, renewed the bill when it became due, by giving another at a longer date, together with a warrant of attorney to confess judgment in case the second bill not be paid when it became due, & agreed to pay the expenses of the warrant of attorney, which was drawn up by pltf.' solr. The first bill was not given up, but pltf. retained it in possession. The second bill was paid when it became due, but not the expenses of the warrant of attorney, amounting to £2 12s. 6d., whereupon pltf. sued defts. in *assumpsit*, & declared on the first bill, adding the common money counts, & a count on an account stated. The jury found a verdict for pltf. for £2 12s. 6d. without specifying on what counts it should be entered up:—*Held*: (1) pltf. had no right to sue on the first bill; (2) with a suggestion to deprive pltf. of costs, the verdict should be entered on the money counts:—  
 v. RIMMER (1822), 1 Bing. 100; 7 Moore, C. P. 427; 130 E. R. 41; *sub nom.* DILLON v. RIMMER, 1 L. J. O. S. C. P. 3.

2629. — **Recovery of interest due on first bill.**—Pltf. 1. A bill of exchange drawn by deft. when it became due, & in

for interest, & continuing to hold the first bill. The second bill was paid after it became due:—*Held*: pltf. was still entitled to sue deft. on the first bill, for the interest due on it.  
 — LUMLEY v. MUGRAVE (1837), 4 Bing. N. C. 9; 3 Hodg. 247; 6 Scott, 230; 7 L. J. C. P. 49; 1 Jur. 709; 132 E. R.

a bill drawn by deft.; when it became due Mar., deft. asked for time, & in June the pltf. another bill for the same sum, giving him at the same time that something for interest, & continuing to hold the first bill. The second bill was paid after it  
*Held*: pltf. was still entitled to sue on the first bill, as well as the acceptance upon it:—LUMLEY v. MUGRAVE, 4 Bing. N. C. 15; 6 Scott, 230; 7 L. J. C. P. 49; 1 Jur. 709; 132 E. R. 694.

— **Action on bill before second bill due.**—Recovery of expenses of noting first bill.

bill of exchange became due, & in London, where it had been sent for payment, the person who had it to pltf. came to him with another bill for same amount, & prevailed on him to take it, & on account of & in renewal of the first bill. Before the second bill became due, & without delivering it back, pltf. brought an action on the first bill against the acceptor:—*Held*: pltf. could not recover even the expenses of noting the bill:—KENDRICK v. LOMAX (1832), 2 Cr. & J. 2 Tyr. 438; 1 L. J. Ex. 145; 140 E. R. 172.

of Sect. 11,

XIII.

— **Second bill altered after**

**Without consent of drawer.**—A bill of exchange for £18 having been dishonoured, it was altered to £10 in

bill, which was accepted by the same person, who, after acceptance, was told of the alteration:—*Held*: as the bill was void, the first was

valid:—COX (1834), 1 Cr. M. & R. 471; 5 Tyr. 174; 4 L. J. Ex. 7; 140 E. R. 1105.

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*Held* the case of — NORTH

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*Sect. 11. renewal of instrument or*

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**Second bill taken in full satisfaction.]**

In an action by an indorsee of a bill of exchange, deft. pleaded a delivery to a prior indorser, before his indorsement to plff., of a bill for a amount, which he received in full

of bill, that the prior indorser indorsed the bill so given, & that deft. had paid the indorsee of the second bill. On special demurrer, assigning for cause, that it did not appear that the second bill was negotiable, & that there was no legal payment of it:—*Held*: that part of the plea might be rejected, & the averment of the acceptance of a bill of a larger amount by the then holder, in satisfaction, was, without showing payment, an answer to the action.—*Lewis v. Lyster* (1835), 2 Cr. M. & R. 704; 4 Dowl. 377; 1 Gale, 320; Tyr. & Gr. 185; 150 E. R.

**Not paid when due.]**

In an action on a bill of exchange for £43 by indorsee against acceptor, a plea that after the bill became due the drawer gave plff. his promissory note for £44 in full satisfaction & that plff. accepted it in satisfaction, is a good answer to the action & a replication that the note was not paid when due bad. *Said v. Rhodes* (1830), 4 Dowl. 743; 1 M. & W. 153; 1 Gale, 376; Tyr. & Gr. 298; L. J. Ex. 91; 150 E. R. 385.

*modulations*: *Reid*, *Hallie v. Moore* (1846), 8 Q. B. 539; *Tripp* (1846), 13 M. & W. 23; *Turner v.* (1860), 15 L. J. C. P. 223; *Jones v. Broadhurst*, 9 C. D. 173. *Mentd.* *Purwood v. Peck* (1841), 9 M. & W. 196

**Second bill to "retire" first bill—Second bill forged.]**

T. kept an account at a bank, who discounted for him a bill for £365, drawn by him upon, & accepted by, deft. The day before the bill became due T. went to the bank, who held another bill of his for £370, due that day, & requested the manager to "retire" the two bills by discounting two others of similar amounts. The manager consented, & T. gave him a bill for £365, purporting to be accepted by deft., to "retire" the bill of that amount. The bank discounted the second bill for £365, & placed the proceeds to the credit of T., minus the discount, & they got back from their London agent the first bill for £365, with the acceptance cancelled. Several thousand pounds had been subsequently paid by T. into the bank. It afterwards turned out that the acceptance of the second bill for £365 was forged by T. In an action by the bank against deft., as acceptor of the first bill:—*Held*: the facts did not support a plea of payment of the bill by T.—*Bell v. Buckley* (1856), 11 Exch. 631; 25 L. J. Ex. 163; 4 W. R. 251; 156 E. R. 983.

**Agreement for renewal.]**—See Nos. 621–626, 652, 653, 657, *ante*.

**2636. Whether acceptor of first bill discharged—Parties cognisant to & not dissenting from renewal.]**

A. drew a bill on B., which B. accepted. C. became the holder of the bill for value. Before due date it was agreed between A. & C., A. assuring C. of B.'s concurrence, that the bill should be renewed, & C. gave to A. a cheque on C. for the

of in favour of plff., which was bill  
R. gave his note to plff. the bill & interest  
months, & plff. made out in which the bill & the debit

was The above note to be  
In by R.

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for this found  
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N. B. R.

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given for deft.:—*Held*:  
verdict (1843), 2 Kerr.  
THURMAN v. 314. CAN.

for the  
accommodation of one B.  
ory note in favour of B. or  
which B. indorsed to & nego-  
with the applt. co. The note  
met at due date either by  
or B., but B. shortly afterwards  
a portion of it & handed to the  
of the applt. co. his own  
note for  
went with B. to resp.

then said, "I will  
referring to the new  
which resp. ha

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by resp. was  
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LTC. v.  
24 N. Z. L.

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holder, & the maker of the later note  
is informed, at the time he makes it,  
that it is not intended to release any  
of the parties to the former note, no  
novation takes place, & it remains  
to the

E.

J.]—To  
an action on a promissory note, deft.  
d on equitable grounds that  
the note attained maturity be  
the same by making plff.  
another promissory note or renewal  
thereof which note plff. took in dis-  
charge of the note sued on in considera-  
tion of a sum paid to him by way of  
discount. Deft. then pleaded that  
plff., after making said second pro-  
missory note or renewal, & whilst he  
was holder thereof, agreed with deft.  
for a good & sufficient consideration  
not to sue deft. on the last mentioned  
note for a period of 6 months. On a  
motion to set aside the plea as em-  
barrasing:—*Held*: the consideration  
upon ought to have been dis-  
; & also it ought to have been  
clear in the earlier part of the  
plea whether the renewal was in accord  
& satisfaction of the previous note;  
the plea as it stood was

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the process of incorporation under  
13 & 14 Vict. c. 28 & renewed by the  
notes of the co. after the completion  
of the incorporation, the old notes

C. J.

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certain lands to  
a member of a mercantile firm, to secure  
an existing indebtedness to the firm  
& future advances.  
husband, by the M. —  
veyed his equity of redemption in  
lands to his wife, subject to the

firm was represented



amount of the bill, to the intent that B. should in funds to meet the original bill & should thereupon accept the renewed bill. A. sent the new bill to B. for acceptance & also sent him the & B. knew the purposes for which both nt:—*Held*: the agreement between A. C. did not release B. from his suretyship as of the first bill.—*TORRANCE v. BANK OF BRITISH NORTH AMERICA* (1873), L. R. 5 P. C. 246; 20 L. T. 100; 21 W. R. 529, P. C.

32.

c.

(1883), 14 L. T. 136.

Validity of consideration of instrument given in substitution or renewal.)—*See* Part X., Sect. 2, ante.

## 12. — OF PARTY LIABLE AS SURETY.

### GARANTER.

#### 1.

#### OF PRINCIPAL AND MAY BE SET UP.

##### General

absolutely liable to pay the bill, according to its The drawers are liable only upon the cons of the acceptor's or drawee's making of the holder's performing certain

HURST

C. B. 173; 137 E. R. 858.

Holtshaw v. Bush (1851), 11

1851, 3 Mac. &amp; G. 587;

18 Q. 1

Simpson v.

845;

c.

(1863), 13 C.

v.

R. 10 C. P.

Cob. &amp; El.

Howe,

— The acceptor of a bill of t, by his acceptance, he do which will make him liable to indemnify domer of it who may afterwards pay it. The is a surety for payment to the holder, one of the partners of R. & Sons, in posited with the N. of two of his own

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Where a note is as a maker &amp; by

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KENNY (1860), 19 Q. R. 109; reval. 3 A. R. 136.—CAN.

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PART XIV. SECT. 12.

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Q. R. 1 &amp; C. 36.—CAN.

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D. & Co. sold to be paid for in cash. Cash was paid only for Sons offered a bill of exchange for was of the N. bank. R. & Sons that if D. & Co. would inquire of would find it would be all right R. The bank manager refused to discount the bill without the indorsement of D. & Co., but said that believed D. & Co. would incur no more than a by

bill. D. & Co. thereupon consented to bill, indorsed it in the ordinary way, & it discounted by the bank & carried to their In Jan., 1870, R. & Sons stopped payment. The bill became due in Feb., & was dishonoured. D. & Co., who then became acquainted with the fact that securities had been deposited with to cover advances on R. & an action against the N. bank benefit, so far as they would go, of deposited in Dec., 1874, claiming to be sureties to the bankers for what was due upon the bill: *Held*: D. & Co. were sureties on the bill.

BANK 6 App. Cas. 1; 50 L. J. Ch. 43 L. T. 29 W. R. 703, H. L.

(1882), 18 C.

Nicholas v.

(1904) 1 192; 100 313 K

—In

of an accommodation as between him & the drawer, the drawer may in discharge of HURST (1850), 9 C. H. 173; 137 E. R. 858.

as v. Bush (1851), 11

v. Dewhurst (1861), 3 Mac. &amp; G.

(1851), 11

### Admissibility of parol

in order to enable a to at law a defence on the ground that time has given to the principal, it is necessary to show that the original contract between plff. & deft. was that of creditor & surety.

bill of exchange, on which this action is b, is a

# BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

shows both at law & in equity that the contract of debt. to plffs. was as principal, & not as surety, & moreover plffs. had not notice at the time when they took the bill that debt. was other than an acceptor for value. There are authorities tending to show that, in order to enable a surety to raise at law a defence on the ground that time has been given to the principal, it is necessary to show that the original contract between plff. & debt. was that of creditor & surety. How this may be at law are not now called on to decide. We are

this case as a ct. of equity (BLACK-  
J.). BAILEY v. EDWARDS (1864), 4 B. & S.  
761; 8 New Rep. 377; 34 L. J. Q. B. 41; 9  
L. T. 646; 30 J. P. 790; 11 Jur. N. S. 134; 12  
W. R. 337; 122 E. R. 645.

Aspld. Ewin v. Lancaster (1865), 6 B. & S.  
Mentd. Oriental Financial Corpn. v. Overend,  
(1871), 7 Ch. App. 145, n.; Phillips v. Foxall  
L. R. 7 Q. B. 686; Swire v. Redman (1870), 24  
W. R. 1060.

2641. Originally the cases at law  
were extremely strong that the position of parties  
to a bill of exchange or promissory note could not  
be reversed by making the party, who appeared on  
the face of the instrument to be the principal  
debtor, surety for the other. They proceeded on  
the principle that parol evidence is not allowed to  
alter a written contract: that principle is a sound  
one & has governed many cases in cts. of law.  
But cases in equity establish that when one or  
of two parties to an instrument are primarily  
as in the instance of a common bond where  
all join as obligors, & the creditor may sue  
one of them at any time, it is competent for  
him to show that the relation of principal & surety  
exists between the parties (CHROMPTON, J.). EWIN  
v. LANCASTER (1865), 6 B. & S. 571; 6 New Rep.  
364; 12 L. T. 632; 13 W. R. 857; 122 E. R. 1306.

Gurney (1871), 7 Ch. App. 145, n.

**Joint maker of note.** In an action by  
against the maker of a promissory note,  
plff. proved a joint & several note made by debt.  
another person: *Qu.*: whether evidence

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e will be implied  
for which the note

O. R. 603. CAN.  
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Held

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2 C. P. 412. CAN.

[*Joint drawers.*]—The  
of an accommodation bill having  
it after dishonour, sued two of the  
recover the amount; the

that  
the bill as  
whom the bill had  
counted:—*Held*: that evidence of the  
even & the  
might be placed in the situation  
of treating debts, as if their names were  
not on the bill if the object with which  
their names had been put there was in  
fact known to him.—LEUNG SUN HOY  
v. CHEONG WING TUNG (1908), 3 Hong  
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admissible to show that debt. was a surety, inas-  
much as he appeared by the terms of the promissory  
note to be a principal.—PRICE v. EDMUNDS (1829),  
10 B. & C. 578; 5 Man. & Ry. K. B. 287; 8  
L. J. O. S. K. B. 119; 109 E. R. 566.

(*Ans.*:—*Reid*. Abbot v. Hendricks (1840), 2 Scott, N. R.  
Mentd. Hollier v. Eyre (1842), 9 Cl. & Fin. 1;  
Mentd. (1846), 8 Q. B.

6 C. B.

2643. —.]—One of the makers of a joint  
sory note may show that he was a mere  
for the other party & so known to the payee  
of the note.—HALL v. WILCOX (1831), 1 Mood. & R.

Reid.

v. Boycot

, 2 E. & B.

**Holder with notice—Necessity for  
specific agreement to treat maker as surety only.**—  
To a declaration by payee against one of two makers  
of a joint & several promissory note payable on  
demand, debt. pleaded that he made the note as  
surety & for the accommodation of F., his co-  
maker, & that there never was any value or con-  
sideration for debt. making or paying the note, all  
which had always been known to plff., & averred  
that after the note had become due & payment  
had been demanded of F., plff., being the holder,  
gave time to F., without the consent of debt.  
After verdict for debt. on the plea:—*Held*: it was  
no answer to the action.

The *bond fide* holder of a bill or note cannot be  
prejudiced in the rights which he had according  
to the terms of the instrument, by knowledge that  
the acceptor or maker is surety for another, where  
there is no specific agreement, at the time when  
he takes the instrument, to receive it from the  
acceptor or maker as a surety only. *Qu.*: whether  
if such a contemporaneous agreement be proved,  
the acceptor or maker is discharged by time being  
given to his principal.—MANLEY v. BOYCOT (1853),  
2 E. & B. 46; 22 L. J. Q. B. 265; 21 L. T. O. S.  
99; 17 Jur. 1118; 1 W. R. 324; 1 C. L. R. 273;  
118 E. R. 686.

*Reid*. Strong v. Foster (1855), 17 C. B. 201;  
Mutual Loan Fund Assocn. v. Sudlow (1858), 5 C. B. N. S.  
449; Greenough v. M'Clelland (1860), 2 E. & E. 429.  
Mentd. Fisher v. Bridges (1863), 1 C. L. R.

plff. in a banker's hands. B. pro-  
to the banker to pay \$3,500, &  
gave his own note for the balance.  
The banker telegraphed to plff., who  
replied that he would renew, but would  
not give up M.'s name. The  
was paid, & B.'s note for the  
taken, the bank retaining

M. knew nothing of  
until payment  
of him on B.'s default.  
up that he was merely a  
B.'s portion of the li  
: as between debts, & plff.,  
was, in the first place,  
to plff. for the whole amount of  
The contention of M.  
that, having furnished his share of the  
his position as to the balance  
that of surety for B.,  
plff. unless it was  
new of the facts.—

v. BRILACROWAN  
17 W. L. R. 616; 31 Man. L. R. 316.  
CAN.



**2645.** Where a joint note for the debt of it is in order to give the other surety as against the creditor, to show that only a surety, that the creditor knew him to, & that he accepted him as such. — *Stroud v. 15*, 17 C. B. 201; 25 L. J. C. P. 106; 4 W. R. 151; 139 E. R. 1047.

*Reid*, *Poolley v. Harradine* (1857), 7 E. & B. Wright v. Sanders (1857), 29 L. T. O. S. 175; York & County Banking Co. v. Bainbridge (1840), 43 L. T. *Mould*, *Frazer v. Jordan* (1857), 8 E. & B. 303; Mutual Loan Fund Assocn. v. Sudlow (1858), 5 C. B. N. S. 449; *Greenough v. McClelland* (1860), 6 Jur. N. Bailey v. Edwards (1864), 4 B. & S. 781; *Evins v. B. & S.* 371.

on a, on equitable grounds, that the notes jointly with J. for J.'s accommodation, & as surety for J., & that the notes were delivered to plff. & taken by him on an agreement between them that deft. should be liable as surety only, & with notice that he was surety only, & that wards plff., without deft.'s consent, gave to J., but for which he might have obtained ment: *Held*: though the absolute written between deft. & plff. contained in the not be varied by parol in equity any than at law, yet an equity arose from the re of surety & principal between deft. & J., & the notice thereof to plff. at the time he to & the plea was good. *Qu.*: whether the would have existed, if the notice had the taking of the notes, but before the giving of time. *POOLLEY v. HARRADINE* (1857), 7 E. & B. 131; 26 L. J. Q. B. 150; 28 L. T. O. S. 367; 3 Jur. N. S. 488; 5 W. R. 405; 119 E. R. 1307.

*Annotations*. — *Conrad*, *Hayner v. Fosse* (1859), L. J. Ex. 132. *Fold*, *Taylor v. Burgess* (1859), 5 H. & L. 411.

*v. Walmsley* (1862), 3 L. T. 79; 4 B. & S. 761; *Price v. Evins v. Lan*

*Corpn. v. 145*, n. *Phillips v. Bradford Banking Co.* 449; *Ex p. Clemmell* (1861), 4 L. T. 227; *B. D. 516*, *Leicester Banking Co.* 10 T. L. R. 317.

**2647.** Misconduct in security. — Plffs. lent money to A. on the of A.'s furniture & of the joint & several note of A. & deft. as his surety, which note plffs. took on the terms of deft. being such surety: — though the character of deft. as surety did appear on the face of might give evidence of his being up, together with a loss occasioned by

furniture, as an

to

(1858), 5 C. B. N. S. 449; 28 L. J. C. P. 106; 5 Jur. N. S. 336; 141 E. R. 183.

18 T. L. R.

T.

Time given to

In  
do

the note only as surety for B., & to secure to plff. solely from B., that it

deft. should be  
plff., without

H.

for

It was proved that

had

plff., for

H., who, without the knowledge of deft., with then able to pay, to give him further for payment, during which further time B.

was an

5 H. & N. 1; 29 L. J. Ex. 7;

T. 12; 5

N. S. 1317; 8 W. R. 27;

E. R.

*Mould*,  
10 L. T.

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If one

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E. & E. 42

L. J.

15; 2

171;

Jur. N. S. 772; 8 W. R. 612; 121 E. R.

Ex

1841

L.

in which

deft. had

to

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promissory

which be

as a

T. in

c. *RANTLETT*

of

giving the co. an

*Held*: D. must

a binding agreement arrived at

1 R. 379.

100 &

13

C. R. 64; 3 W. L. R.

2648 H.

of

the

only

that

an unreasonable time to demand pay ment from the principal & *Held*: a bad defence. — *Beira* 120 Q. v. STANLEY (1861), 1 L. L. T.

2 & 8.]

L. T. 43

&

v.

**Defence**

It is a good e

to an

of a promissory note, that was made by deft. & R. jointly & severally, that deft., as plff. know, was only surety for R., that afterwards, without deft.'s consent, plff. became indebted to R., in an amount equal to that of the note & all money due from R., in the following viz., that plff. & R. were partners, & to R. his interest in the partnership

the

of the , but

in

R.

receive them. Her

R. 7 C. P. 372; 41 L. C. P.

L. T. 20 W. R. 728.

& Goods Ry. &

Co. v.

In

by

of a bill of

it is no  
only

of the drawer, & that due diligence had not  
amount from

e. LUKER

4

**Principal**

surety. R. & H  
the habit, then  
to R. & S., in

to pl  
bills

R.

which plffs.  
which  
put

in funds

bills

due,

fresh

maturity  
which defts.  
to plffs., who

the

partnership of R. & H.

it

the whole

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firm.

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bills,

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him

H.

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**Whether drawer**

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The  
upon the  
410;

R. 1145, L. C.

Act,  
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whether the bill  
not, or whether  
or against it.—  
Ch.

L. Principal

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The  
at  
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is retired by party action—  
A. & C., shareholders in a

A.

10 R.

this, had

R. :—Held : R.

H.

position with

to plffs.  
of 1

without their amount, & so deprive  
right they had to treat both R. & H. as  
debtors, & R. was not discharged by  
time to H. by means of the fresh  
Semble : even if the giving fresh acceptances  
have otherwise discharged R., as it was only a con-  
tinuance of the old practice to which R. was a  
party, it would not have discharged him.—SWIRE  
v. REDMAN (1876), 1 Q. B. D. 536; 35 L. T. 470;  
24 W. R. 1000

A. C.

2—BY

TIME TO

10,

**SUB-SECT. 3. BY OTHER DEALINGS WITH  
PRINCIPAL DEBTOR.**

*See, generally, GUARANTEE.*

**2654. Receiving composition from—Acceptor—  
Whether indorser discharged.**—Where the in-  
of a bill of exchange becomes bkpt., & the  
proves the amount of his bill under his com-  
& afterwards compounds it & discharges  
acceptor without notice to the assignees of the  
he thereby also discharges the indorser  
the proof of his debt must be expunged  
SMITH (1789), 3 Bro. C.

R. 370, L.

Held

Ch. 56; R.  
442.



44 L. J. JJ. ; 31 L. T. 745; 23 W. R. 251, with the principal & his other creditors, &

Consol. J. Q. 45 L. J. Bcy. 13: 1m Corp. e. Re Fothergill v. Morton  
11 Q. B. 54. Mand.  
L. R. 10 Q. B. 406: v. Lond  
13 Ch  
394.

**Bill renewed on security of further bill—Whether acceptor of further bill discharged.**—A firm of three partners agreed to make advances to a consignee upon certain terms as to commission, & as to a lien on the return of proceeds of the shipment. They accepted on the faith of such agreement bills drawn on them by the

of the do on having the six, in which the was drawn by the the six, & indorsed by It was carried by bill. Afterwards the holders were parties to

ments from in respect of the of De G. 414; 8 L. T. O. S. 495; 11 Jur. 175, Ct. of R.

**Whether maker charged—Covenant not to sue indorser.**—The holder of an accommodation note, who has received a composition & covenanted not to sue the maker for whose accommodation the note was made, may notwithstanding sue the maker, though on payment of it the maker will have a right of

N. P.

**2550.** —A. gave a note payable to B., for which A. had no as a security for goods to B. on credit, & B. indorsed the note over to the creditors. B. afterwards executed a deed of composition with the creditors, by which he undertook to pay his debt to them by instalments, & it was that they should not be prevented by

which they held, & that on any default in paying the instalments, the deed should be void:—*Held*: the delay granted to B. by such agreement, did not discharge A.—*NICHOLS v. NORMAN* (1831), 3 H. & Ad. 41; 9 L. J. O. S. K. B. 172; 110 E. R. 15.

v. Cole (1846), 16 L. J. Ex. L. R. 7 C. P. 9.

**— Maker—Whether joint maker discharged—No demand.**—One of two drawers of a joint promissory note, payable 12 date, who is surety for the other to the is not discharged by the drawee not demanded payment from the surety when due, till after having entered into a deed of

PART XIV. SECT. 12, SUB-SECT. 3.

TRAVIN  
CAN.

111 R. 757. C. L.

with a surety in a joint & several note to a creditor of the principal debtor, for ing the debt. The principal afterwards an assignment of property for the creditors, containing a release by but no reservation was contained of rights against the surety. The creditor to the promissory note was given with the privity of the surety, & on the

the surety not to be

& two of who executed the

bkpry, being the execution of had before committed an act of bkpt.:—*Held*: the

of the deed was a estate of the BLAKELY, Ex p. HARVEY, Ex p. SPRINGFIELD (1851), 4 De G. M. & G. 881; 1 Bankr. & Ins. Rep. E. R.

**2552.** **Holder with notice.** of the makers of a joint promissory note may that he was a mere surety for the other so known to plff., the payee of the note plff. has taken a composition from the debtor. *HALL v. WHARF* (1831), 1 Mood. & R. P.

v. Consol. Manley v. Boycot (1853), 2 E. & R. 46.

**2553.** **Secret bargain in respect of assent to composition.** Plff. having advanced a sum of money to M., he obtained from him (*inter alia*) a promissory note in which

at a of that they the resolution, but M. agreed with plff. in writing, without the knowledge or consent of debt., to discharge in full his indebtedness to plff. M. to pay the composition & also the debt

Thereupon plff. sued debt. on the *Held*: by the bargain which plff. had made M. he had lost both his original debt & his d from his surety.

MAYHEW v. BOYES (1810), 103 L. T. 1, C. A.

**Whether indorser**

party who had indorsed it for of the maker, it appeared that had signed an agreement to e maker of the note for in the pound in full of his on having a collateral security for that sum from

v. makers of the note a composition of 50 per cent., & discharged their lands from further liability, expressly retaining the right to go against their personal assets, & he proceeded to execution against the goods of the indorsers:—*Held*: a discharge of the indorsers from further liability.—*MALLON v. JAMES* (1857), 3 Ch. 655.—CAN.

as

a third person. It further appeared that the agent of the maker had represented to pltf., before he the agreement, that deft. would continue for the residue of the debt secured by the note, & that the would be void unless all the creditors (1) the execution of the had the effect of discharging the surety; (2) the being as to the legal effect of th immaterial, & had not the effect of avoiding it, & as the latter of them gave to the agreement a meaning different that which appeared upon the face of it, evidence of that representation was not

B. & C. 307; 8 L. J. O. S. K. B. 270; 107 E. R.

Cr. M. & H.  
L. J. Ch. 811  
(1911) 3 K. B.

Hirachand Punamchand v. Temple,  
Reid, Re Barnes (1861), 4 L. T. 60;  
at Glas & Coke Co. v. Dick  
L. T. 913. Montd. Brown v.

Henry  
West

Rephard v.  
1846, 10 L.  
32 T. O.  
7 L. P.  
B. D. 1

**Whether accommodation acceptor discharged.** If a creditor, the holder of a bill of exchange, executes a deed of with the principal debtor, the surety, the

Re R.  
517, L. C.

136 K. A. C.  
Re Blakely

Harvey v. Bank & Ins. R.  
J. B. v. Re Blakely, Kr. p.

W. G. M.

187 J. Ch.

**Surety—Whether co-surety dis-**  
effect of a

a surety, in c. HEVILL.  
Ad. & El. 675; 1 Har. W. 758; 5 L. J. K. B.  
120, 111 E. R. 911  
6 Nev. & M. K. B.

178.

1846, 3 B. Owen

L. K. & H.  
Died.  
v. H.

Hewitt  
(1) 7 L. J. K. & J.

**2667. Proving in bankruptcy of maker—Without valuing security—Whether joint maker discharged.**  
—Deft., by signing with P. a joint & several promissory note, became surety for repayment of a sum of money advanced by pltf. to P. Under terms of the contract of suretyship P. with pltf. a policy of insurance on his life by way of collateral security. P. failed to pay the premiums on the policy, which in consequence to the expiry of the policy P. became bkpt., & pltf. proved against P.'s ex for the whole amount of the debt due, without putting any value on the policy, which was ordered by the Ct. of Bkpcy. to be delivered up to the trustee:—**Held:** pltf., by adopting that course, had not discharged deft. from his liability as surety, because (1) deft.'s position had not been altered by the surrender of the policy to the trustee, for, having lapsed, it was a mere piece of waste paper of no marketable value whatever, & (2) even assuming it had some value, & could be said to be a security, pltf. was none the less entitled to exercise the option given by Bkpcy. Act, 1869 (c. 71) of surrendering the security to the trustee & proving for the whole debt, because there happened to be a surety for the payment of that debt. —**RAINBOW v. JUGGINS** (1880), 5 Q. B. D. 40 L. J. Q. B. 718; 43 L. T. 346; 44 J. P. 29 W. R. 130, C. A.

Don. Reid, Re Wolmershausen, Wolmershausen v. Wolmershausen (1890), 38 W. R. 537.

**2668. Taking further security—Remedy not co-extensive.**—Where B., being indebted to A., C. to join with him in giving a joint & promissory note for the amount, & afterwards having become further indebted, & being pressed by A. for further security, by deed, reciting the debt, & that for a part a note had been given by him, B., & C., & that A. having demanded payment of the debt, B. had requested him to a further security, assigned to A. all his old goods, etc., as a further security, with a proviso, that he should not be deprived of the use of the property assigned until after day's notice:—**Held:** such deed did not suspend the remedy on the debt, but A. might, notwithstanding the deed, sue at any time. —**TWOPENNY v.** 3 B. & C. 208; 5 Dow. & Ry. K. B. 259; 10 E. R. 711.

Deac.

Bell

(1841).

(1841).

3 Mont. D. & De G. 373; Oriental Financial  
Gurney (1871), 7 Ch. App. 145,  
rth (1841), 10 L. J. C. P. 239; Price v.  
C. B. 561; Newton v. Chorlton (1  
; Bingham v. Corbitt (1863), 11 W. R.

6 Har.  
Montd.  
Homan

378; Stamps Comr.  
A. 167; Westmoreland Green &  
(1891), 65 L. T. 428.

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32 S. C. R. 479.  
Misapplication by

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**2666. Agreement with drawer to give up bills for cancellation.**—Whether acceptor

holder of bills of exchange, for the accommodation of B., the drawer, came due entered into an agreement with B. that, in consideration of B. giving him a freehold mtge. for the bills & other debts, he would deliver up the bills to be cancelled, & give up his claim on all

The mtge. security was given. At the of the agreement the holder knew

by the holder the acceptor on equitable

(1865), 6 H. & N. 571;

12 T. 632; 13 W. R. 857; 12

*Reid, Oriental Financ*  
(1871), 7 Ch. App. 145, n

had a  
EWING v. LANE-  
New Rep. 1  
R. 1300.

*Corpus v. Overend,*

bill of in  
of a letter of credit received from them. He counted the bill with applts., & gave them the of lading & shipping documents, & also, as a of

to the bill,

T. bill  
honoured:—*Held:*  
applts. had

to but failed

it was  
was liable on the bill,  
with their  
of the bill.

, 41 L. T. 385, P. C.

As regards  
858.

#### Payment &

**Renewal of instrument or taking fresh instrument.**  
See Sect. 11, ante.

**2670. Parting with security.** Whether indorser charged. A., as B.'s surety, indorsed bills, drawn by B., to C. Subsequently B. gave C. a lien, in respect of such bills, upon good C.'s possession. B. having written to C. ing him to deliver up such goods to D., C.

do so upon D.'s paying him a less sum than the amount of the bills:—*Held:* A. was thereby released. CAMPBELL v. BORTHWELL (1877), 17 J. Q. B. 144; 38 L. T. 33.

**2672. Whether surety discharged.** Composition from principal debtor—Drawer. If a of an accommodation bill of not.

26701

a note made by A. & B. to E.,

E. in A.

to be no

W. R. 708.—CAN.

notes of a

the of

BA  
O. W. R.

a statement by co-surety that note paid.) Deft., a surety, was told by a co-surety that the note, upon which he was being sued, had been paid. It had not, in fact, been paid, but it did not appear that in consequence of the representation Deft. had done or forbore anything in respect to the principal creditor:—*Held:* he was not discharged. BANK OF BARRON NORTH AMERICA v. AUSTON (1907), 9 O. W. R. 689.—CAN.

b. Note given as security for performance of agreement.—Judgment for maker in action on agreement. —*NOTRE v. DRENNAN*, 13 C. L. J. 326.—CAN.

c. Indorser agreeing to pay more than composition note.—The indorser of composition notes is not discharged by the mere fact that the compromising creditors have secretly stipulated with debtor that he shall pay them an amount in excess of the composition rate as the condition of their consent

5 H. C. R.

R. v.

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(1878), 42 Q.

CAN.

of debt by  
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a indorser

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& surety.

in the of composition that the  
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to the deed, that  
should be reserved, cannot be  
Re HENTON, Ex p. GLENDINNING (1819),  
517, L. C.

right, but circumstances might prevent this  
having effect.—OWEN & GUTCH v.  
4 H. L. Cas. 997; 1 Eq. Rep. 370;  
L. T. O. S. 58; 17 Jur. 861; 10 E. R. 752, H. L.

2874. — an action by payees of a joint & several promissory that p'tfs. gave time to C., the debtor, & so released them. The note was on Dec. 7, payable on demand. On Dec. 22 W. & defts. executed a deed, by which C. was not to be sued till June 22 following :

2675. Release of principal debtor--Ac-  
: a release to the acceptors by  
the holder of a bill which had been dishonoured &  
b, did not discharge the indorsers, the  
the bill, &

H. C. Held; H.  
GOVERNMENT I r.  
140 W.

2673 v.

.)--Delta II.  
 the

at 13, look their joint due, plzf. at

intention of waiving                  of his  
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                                 ending  
                                 hereby  
                                 M. S.

him. <sup>supra</sup> of  
(1911), 17 W. L. R. 616;



for  
the maker, having obtained instrument

1. R 150. 37 N. R. II. 610.  
29 N. C. II. 390. — CAN.

5673 (M). — The holders of a note agreed with the maker, & certain of the indorsers, to extend the time for payment. The agreement expressly reserved all rights & remedies against persons other than parties to the agreement. — *Held*, a subsequent indorser not privy to the said agreement, was not released. — CANADIAN BANK OF COMMERCE v. NORTHWOOD (1887), 14 O. R. 267. — CAN.

**12.**

30724. (Continued.) (Co-maker.)—A., the principal debtor, & H., as surety, made a joint & several note. On the note falling due, the holder, without the knowledge of H., gave A. time for payment, expressly reserving his



against any obligants other than the  
who, though exonerated by the holder,  
still subject to the claims of the several  
Muir v. Crawford (1873), 1 L. R.  
2 Sc. & Div. 456, H.

of a bill  
for £100 being thereon by the  
into of £30 in of the  
whole cause of action. The  
by R. S. C., App. B., Form 4, that they  
that sum, having previously written to the  
to

the acceptor was not  
& the indorsers, the balance  
it from the by  
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that the  
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57 L. T. 216; 3 T. L. R. 723.

St T.

generally, GUARANTY.

2677. Right to securities. R. &  
lent a sum of money to L.  
two promissory notes, in of which  
y. At

a further for their debt upon the  
& a pension of their tenant The rent of  
tenant fell into arrear, the brewers distrained, but  
they afterwards took the furniture mortgaged at  
a valuation in satisfaction of their rent; they  
then sued the surety for the sum secured on  
promissory note & interest. Upon a bill by

any debt but for which it a of  
an by for

461; L. J. Ch. 761; L. T. O.  
1187; 5 W. R. ; 44 E. R. L.

the & indorser,

3 L. C. J. 137.—CAN.

the still  
Bell v. XING 11 Gr. 142.  
CAN.

XIV.

12, SUB-SECT. 8.

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for  
which he did on the promise of the

Associations:—Fidd, Coates v. Coates (1864), 31 Beav. 242.  
Appl. Kinnaird v. Webster (1874), 10 Ch. D. 139. Concl.  
Dunoon, Fox v. North & South Wales Bank (1860), 8  
App. Cas. 1. Bell, Watts v. Shuttleworth (1860), 5  
H. & N. 235; Murphy v. Glass (1869), 6 Moo. P. C. C. N. W.  
phod, Rothwell (1871), 47 L. J. Q. R. 144;  
v. National Bank of New Zealand (1883), 8 App. Cas.  
135; Nicholas v. Ridley, (1884) 1 Ch. 191. Hould.  
Forbes v. Jackson (1882), 18 Ch. D. 813; Mc Sherry,  
London & County Banking Co. v. Terry (1884), 23 Ch. D.  
671; Taylor v. Bank of New South Wales (1888), 11  
App. Cas. 498.

In winding up of principal debtor,]  
of a co., by way of security for any  
which might be due from the co. to a  
gave the manager of a branch of the bank  
for £2,0

up. The bank proved in the winding up  
for £650 as due by the co. to the bank, &  
tied to a dividend  
The bank afterwards an  
the the on  
7 ft in pur-  
the &  
an

was  
of

the sum paid by him  
for by the bank. GRAY  
Ch. App. 680; 12 L. J. Ch. 127; 27 L. T. 200;  
20 W. R. 920, L. J.

Kinnaird (1874), 1 Ex. D. 137.

2679. paying bill.  
of a bill is a surety for  
it.

of any holder by is so entitled whether  
at the time of his know, of the deposit of those securities.

S. R., one of the partners of R. & Sons, in  
1874, deposited with the N. bank the title  
of two of his own freehold properties, &

as N In ?  
to firm in  
18 L. & Co. sold to R.

part. R. a bill of exchange for  
D. & Co. were  
the R. & Sons said that if  
it would be all right with the R. bills. The  
to discount the bill  
of D. & Co., but said that  
D. & Co. would incur no more than  
liability by putting their name  
D. & Co. thereupon consented to

as well as the \$1,200.

the amount of the notes.  
him an assignment of the mortgage  
Held: the transactions rendered L.  
& phd. in effect co-sureties, & that  
phd. was entitled to the benefit of the  
security held by L. by way of indemnity.  
—Manning v. Kennard (1876), 23  
Gr. 260.—CAN.

# 414 BILLS OF EXCHANGE, PROMISSORY NOTES AND

12.—Of party liable as surety:  
XV. 8. 1.]

5.

bill, it in the ordinary way, & it was dis-  
by the bank & carried to their credit.  
In R. The  
bill due in Feb., & was  
D. & Co., who then acquainted with the  
fact that securities had with the  
bankers to cover advances on R. & Sons'  
an action against the N. bank to have  
the so far as they would go, of the securities  
in Dec., 1874: Held: D. & Co., as  
on the bill, entitled to the benefit  
of the securities. Fox, & Co. v. North  
& North Wales 0), 6 App. Cas. 1; 50  
L. J. Ch. 355; 43 L. T. ; 29 W. R. 703, H. L.

T. L. R. 13  
Jewitt

9 Ch. D.  
3 K. B. 1.

1 Ch.

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who of by the maker of it which the  
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T. L. R. 132, P.

Deft. & L. a joint &  
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but he claimed that on payment of it, he  
by plffs. until

it thereout of amount

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sure H Co., LTD.  
T. L. R.

Valuation in bankruptcy of acceptor.]

O.

by the bills at maturity. by  
the O.  
at maturity E. Co. & O.  
process of li  
dishonoured. The holders of the bills

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2684 v.  
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Q. B. 18, C.

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the amount due on them by  
the estates of both cos. under their  
five windings-up:—Held: the E not  
entitled under the contract of indemnity to  
as O. Co. for the amount  
that by the

of the bills.—Re

BANK, *Ex p.* EUROPEAN BANK (1871), 7 Ch App.  
99; 41 L. J. Ch. 217; 25 L. T. 048; 20 W. R.  
82, L. JJ.

L. T.  
[97] Re  
Re

Baines (1885), 15 Q. B. 1  
(1918), 88 L. J. K. R. 27;  
r. Towers, (1918) 1 Ch. 37.

to

for  
re deposited by defts. with plff. as security, &  
bills were drawn by plff. & accepted by defts. for  
the amounts of the goods sold & advances made.  
Plff. indorsed away such bills for value. During  
the currency thereof defts. filed a petition for  
liquidation under Bkpcy. Act, 1869 (c. 71), &  
their creditors duly resolved to accept a composi-  
tion. The holders of the bills, by arrangement  
between themselves & plff., claimed & were paid  
the composition on the total amounts of the bills,  
plff. paying them the balance thereof. Plff. did  
send in any proof or claim any dividend, but  
his security by sale of the goods de-  
& claimed to hold the proceeds against the  
so paid by him upon the bills:—Held:  
plff. had no right to do so, as by such arrangement  
the holders of the bills had in effect received the  
composition for the benefit of plff., so that accord-  
ing to the bkpcy. law he was bound to account to  
defts. for the amount by which the composition  
paid on the bills exceeded that which would have  
been paid, if the value of the security had been  
previously deducted.—BAINES v. WRIGHT (1885),  
16 Q. B. D. 330; 55 L. J. Q. B. 90; 51 L. T. 721;  
34 W. R. 211; 2 T. L. R. 194, C. A.

See, generally, BANKRUPTCY & INSOLVENCY,  
Vol. IV., pp. 370, 371; Vol. V., p. 1122;  
GUARANTEE.

2684. Right to contribution.]—One of two co-  
sureties to a bond received from the principal a  
promissory note for the sum secured by the bond.  
In an action for contribution brought by such  
against his co-surety:—Held: It was a  
of fact for the jury to say, whether the  
was given in pursuance of an

in-

that his  
for that

by  
Plff.  
&

on

in-

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&

L.

-CAN.

—Plffs. & defts. were

already

of it,

to that they so  
other, but that

so

plff. was



l, or simply as a collateral security from the principal to pld., in which latter case deft. would not be discharged.—*DONN v. WALLEY* (1848), 2 Exch. 198; 17 L. J. Ex. 225; 12 Jur. 338; 154 E. R. 463.

*See* *Dixon* (1881), 45 L. T. 142.

being in want of money, l to pld. & deft. to lend him their names to a bill of exchange, which they agreed to do, & a bill was drawn by pld., which C. accepted & indorsed. C. got the bill discounted for his benefit, & having become bkpt., the holders ap. to pld. & deft. for payment, & pld. paid the whole: — *Held*: pld. could recover, in an action for money paid, contribution from deft. as co-surety.

*WHEELER* (1861), 10 C. B. N. 8

; 30 L. J. C. P. 1290; 142 E. R. 1

4 L. T. 47;

2 Ch. App. 1. (1911), 97

of

& in

of their indorsements.

(1883), 8 App. Cas. 733; L. T. 446; 52 W. R. 780.

70;

T. L. R.

## Part XV.—Acceptance and Payment for Honour.

### SECT. 1.—ACCEPTANCE FOR HONOUR.

1882 Act, ss. 65, 66, 67, 89 (3) (c).

**2687. Liability of acceptor for honour—To original payee.**—If any merchant, for the of him to whom a foreign bill was first & who has first indorsed the bill to another, the bill to the last indorsee, the bill having previously protested for non-payment, then merchant to whom the bill was first payable who against the merchant who first by writing to pay the bill for drawer, the bill for

125 E. R. 494, Ex.

a half (1904), 21 C. L. T. 587; O. W. R. 244, 587. CAN.

for CAN.

**2688. — To holder for of drawer—Payee a fictitious person.**—A P. presented to R. in

by C., of Lima, on R. by R., & P. having apped pa a billing them no for of with bill, the of bill & letter to C., & on the faith pldfs. st for the of The bill turned out to on C., such R. & by pldfs. of bill was

it B. & K. rly for of co-indorser.

Held B. must with D. b J

it. G. & full

G. & D. H

2684 xl.

bill to of up & W

H. him by d in the liability - rer to o dgment. 15 C. P. 20.

IND.

in of V. L. R.

party

by four. Two

RE. &

In

for

J. L. P CAN.

W. W. R. 790; 24 W. Alta. L. R.

that he D., who would be in to take up the note at maturity.

3 C.

**1. — Acceptance for Sect. 1.] Sect. 2. Part**

they entitled to recover m.  
the bill been  
as a bill payable to PHILLIPS v. IM  
, L. R. 1 C. P. 463; Har. & Ruth. 35  
L. 220; 14 L. T. 406; 14 W. R.  
I. N.  
e. Bank of

L. R. 10

for presentment for  
ment to drawee—& protest for  
The acceptors of a foreign bill of exchange, who,  
after presentment to the drawee for acceptance,  
& refusal by them to accept, & protest for non-  
same for the honour of the first  
table on such acceptance, unless  
has been a presentment of the bill to the  
for  
HOARE v. (1812), 10 East, 301; 101  
E. R. 1137.

e. Germaine I. T. H. &

Where press  
protest to be made— Bill drawn on Liverpool  
in London. A bill of exchange was drawn in

to ptf., mer at Before the  
of the bill at be the  
ed, but the bill duly  
pr  
in  
form: "Ac  
L. & Co., & will be paid for their  
if

to  
It was

refused to pay  
to

by the to in  
form of the in for honour.

for honour had not the  
if when

would have been sufficient. MITCHELL v.  
10 B. & C. 4; 4 C. & P. 35, 42; L. & Welsh.  
41; Mood. & M. 381, 387; 8 L. J. O. S. K. B. 18;  
E. R. 352.

A bill of  
duly was afterwards  
a third for honour of the  
at

& the acceptor for honour. In actions  
the latter & the drawer:—Held: (1) the  
payment were made at a  
time: that to the

**PART SECT. 2.**

a bill  
to

M  
(a)

it

When the bill became due it was dis-  
honoured by the acceptor, who, with  
all the indorsers, had become bkpt.  
The brother of the drawer paid the bill  
& sent it to the drawer, but wrote to  
the indorsers desiring them to provide  
for the bill with expenses:—Held: in

the circumstances there was not a  
retiring of the bill for the honour of the  
drawer to the effect of preventing  
recourse against the indorsers.—DICK  
& SOHN v. MITCHELL (1845), 18 Sc. Jur.  
1.—SCOT.

drawee for payment should be averred in the  
declaration, & for want of such averment judgment  
must be arrested.—WILLIAMS v. GERMAINE (1827),  
7 B. & C. 468; 1 Man. & Ry. K. B. 394; 6  
L. J. O. S. K. B. 90; 108 E. R. 797.

Held. Mitchell v. Baring (1829), 10 B. & C. 4.

e generally, see Part VI.,

Noting & protest generally, see Part XII.,

of acceptor generally, see Part XIII.,  
Sect.

**2.—PAYMENT FOR HONOUR.**

1882 Act, s.

**2692. Right of person paying—Against parties to bill.]**—Where a person takes up a bill of  
for the honour of any one whose name is on the  
bill, he becomes an indorsee of the bill, & entitled  
to all remedies against those whose names are on it.  
—MERTENS v. WINNINGTON (1794), 1 Esp. 113,  
N. P.

Annotation: Oenad. Ex p. Wyld (1860), 2 De G. F. & J.  
642; He Overend, Gurney, Ex p. Swan (1868), L. R. 6 Eq.  
344.

**2693. — — — — — Acceptor bankrupt.]**—The  
acceptor for the honour of the drawer of a bill,  
originally accepted by bkpts., having taken up the  
bill, ought, if bkpts. had no effects in their hands,  
to resort first to the drawer. Though his proof  
was permitted to stand, the dividend was restrained  
for an inquiry, whether bkpts. had effects, & if not,  
whether the person, who so took up the bill, had  
effects of the drawer at the time or since. — Ex p.  
5 Ves. 574; 31 E. R. 745.

**Old law.]**—A person  
up a bill for the honour of the drawer, has  
no right against the acceptor without effects.

A bill, accepted, being dishonoured, is taken up  
for the honour of the drawer by petitioner. The  
effect is, that he has a clear right, as against the  
drawer. So he has a right to stand in the place of  
the drawer, but cannot make a title stronger than  
that of the drawer, & oust the assignees of bkpts.  
of the defence, which they would have against  
(LORD ERSKINE, C.).—Ex p.  
3 Ves. 179; 33 E. R. 262, L. C.

see Dmd.  
L. R. 8 Eq.  
3 Deac. & Ch.

**2695. — — — — — Pleading.]**—In an action on a  
bill of exchange with several indorsements, by  
ptf., who had paid the bill under protest for the  
honour of one of the indorsers:—Held: it was  
sufficient, even upon special demurrer, to state  
that he had paid the bill according to the usage &  
custom of merchants, without stating that he had  
paid it to the last indorsee.—COX v. EARLE  
B. & Ald. 430; 106 E. R.

**Discharge of subsequent parties.**

A person, who takes up a bill *supra* protest for  
the benefit of a particular party to the bill.



succeeds to the title of the person from whom, for whom, he receives it, & has all the title of a  
to sue upon the bill, except that he dis-  
all the parties subsequent to the one for  
honour he takes it up, & that he cannot  
indorse it over.—*Re OVEREND, GURNEY &*  
*Co., v. SWAN* (1868), L. R. 6 Eq. 344; 18 L. T.  
W. R.

(1871), 7 App. 143, n

European

**2697.** ——— **Necessity for protest of**  
**—Before payment of bill.**—A party to a bill of  
exchange is not liable for money paid to his use  
by a person who takes up the bill for his honour,  
unless formal protest of payment to his honour be  
made before payment of the bill.—*VANDEWALL v.*  
*TYRRELL* (1827), Mood. & M. 87, N. P.

bill must  
for honour is made, but the formal  
up, or

l. at  
of an by

had been duly  
a formal protest transmitted abroad to the  
for whose honour the payment was made;  
a formal protest extended by the  
book, after the commencement of the action, but  
of ac

*v. WICKLER* (1851), 10 C. B. 680; 20 L. J. C. P.  
105; 17 L. T. O. S. 17; 15 Jur. 316; 138 E. R.  
272.

a bill  
it fell due. On its  
for the  
the bill for  
formal  
A. B.  
bill. The question whether he was  
to prove was by him & the  
arbn., without any such  
by Hkpey. Law Consolidation Act,  
s. 153. H. never repudiated the  
the case on its merits before the referee,  
which

(1)

an award  
the  
a decision in his  
object to the validity of the award on

Act; (2)  
award, B. would have been entitled to  
*Re WYLD, Ex p. WYLD* (1800), 2 De G. F. & J.  
642; 30 L. J. Rey. 10; 3 L. T. 704; 7 Jur. N. S.  
9 W. R. 421; 45 E. R. 770, L. C. & L. J.  
Part XII.

**2700. Duty of person****To give notice of**

for the honour of an  
wrote to & resolved an  
of post from such  
abroad,  
in the regular course  
before giving notice of

*v. POLAK* (1845), 1 C. B.  
L. J. C. P. 146; 4 L. T. O. S. 335; 9 Jur. 554; 135  
E. R. 528.

of  
4, ante.

## Part XVI.—Lost, Stolen, and Destroyed Instruments.

2 Act, ss. 62, 70.

*TAYLOR v. SCHIVENS* (1839), 1 Beav. 571; 48 E. R.**—RIGHTS OF LOSER.**

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pp.

**2701. To new cheque—Cheque on**  
of

ct., though not satisfied with  
the issue of a

on

old,

if

**2702.** ——— **—A** to  
with the L. drawn by B.

banking co. to a claim to him to do  
14 L. T. O.

of by of a e to

the post to another agent of  
Delt. promised to give them another cheque  
for the amount, but afterwards refused to do so,  
the alleged agency & debt, & stated that  
had given the cheque by way of loan to the  
agent to enable him to pay a debt due from  
the latter to plts. The alleged agency was not  
proved otherwise than by the affidavits of plts.,  
& the affidavit of a third person, stating that he  
had received a letter, not produced, from the  
alleged agent, informing him that the latter had,  
as agent of plts., transmitted the cheque by post;  
the claim was insufficient in allegations  
to establish a case for relief in equity,  
on the ground that the cheque had, in the  
me the property of plts., no  
being shown for debt, & pro to  
plts. cheque, the promise could not

17 L. T. O. 1 Jur. 308 E. R. 401.  
To 1, No. 1, Vol.  
2704. Action at common law—Lost instrument  
Foreign bill—Loss after protest. A bill of  
It bill  
by bill.  
Holt, K. R. 118  
E. R.

**Whether action maintainable**  
—An action at law cannot  
the acceptor of a bill of  
lost,

1; N. C. sub

**2706. Proof of loss—Indemnity**  
for payment of a promissory  
in cut

the

K. R.

Exam.  
Mentd. Cross

Or  
bill of

to  
not

R.

(1848), 7 N. S. R.

2706 L.

to whom it was previously indorsed, in payment  
for goods sold, which bill being of greater amount  
than the price of the goods, the traveller gave  
delt. the difference in bills, who indorsed the bill to  
in blank, & it was afterwards inclosed in a  
addressed to them, & put into the post  
but never came to their hands, & 6 months  
after it became due, they sued delt. as the indorser  
of the bill:—*Held*: plts. could not recover on  
bill, without proof of its destruction or total  
—(CHAMPION v. TERRY (1822), 3 Brod. & Bing.  
; 7 Moore, C. P. 130; 129 E. R. 1298.

Consol. Holt v. Watson (1827), 1 Bing. 273.  
Hamuz v. Crowe (1847), 1 Exch. 167.

**2708. Loss after maturity.**—An  
action may be maintained on a lost bill of exchange,  
if the loss did not happen till after the bill became  
due.—(GLOVER v. THOMSON (1826), Ry. & M. 403.

No. 2718.

**Necessity for production of  
instrument — Or proof of contents.**—Action  
against acceptor of a foreign bill of exchange,  
drawn by A. payable to his own order, & specially  
indorsed by him to plts. A clerk proved that he  
carried the original bill to the Temple to enable  
J. to compare it with the affidavit to hold to bail,  
& having done so, & taken a correct copy of it,  
put it into his pocket book, which was stolen on his  
return home. J. proved that the copy produced  
was correct, & that A., the drawer, had indorsed it  
specially to plts. On this evidence plts. had a  
verdict.—(LONG v. BAILIE (1805), 2 Camp. 214, n.,  
N. P.

D. 3  
167

2710.

—The ct. referred it  
to see what was due for principal &  
upon a bill of exchange, upon the produc-  
tion of a copy of the bill verified by affidavit of  
pltf.'s attorney, the original having be-  
out of his pocket, & no tidings of it  
BROWN v. MESSITER (1814), 3 M. & S. 281 105  
E. R. 617.

(1847), 16 L.

**2711.**—Where, in an  
action by the assignee of bkpt., it appeared that a  
bill drawn & indorsed by petitioning creditor, &  
accepted by bkpt., had been produced at the  
opening of the commission, & had been then  
examined by the court, & had afterwards been  
lost, & though search had been made, could not  
be found or produced at the trial:—*Held*: peti-  
tioning creditor's debt was proved by evidence  
of the contents of such bill.—(POOLEY v. MILLARD  
(1831), 1 Cr. & J. 411; 1 Tyr. 331; 9 L. J. O. S. Ex.  
114; 148 E. R. 1483.

**2712.**—A rule was granted  
to compute principal & interest on a bill of exchange

to after  
of its  
P. 9 L. C. J. 217; L. C. R.

to



g a copy before the master, with an affidavit that it was a true copy, & that there was no indorsement on the bill itself.—*PLUMPTRE v. BROWN* (1832), 2 Tyr. 312.

**2713.** ———— Upon an issue on a plea that deft. did not make the note declared on, it appearing that the note is lost, secondary evidence may be given of its contents, whether the note be negotiable or not. *Semble*: a special plea alleging the loss of the note, would afford no defence in the case of a non-negotiable note.

A plea stated that the note had pursuant to an agreement between the pltf.'s testator, to whom it was given: it could not, by rejecting the allegations as to the agreement, be treated as a plea setting up the loss of the note.—*CHARLEY v. GRUNDY* (1854), 14 C. B. 608; 23 L. J. C. P. 121; 23 L. T. O. S. 18 Jur. 653; 2 W. R. 372; 2 C. L. R. 822; E. R. 250.

**2714.** ———— Or proof of loss or absence to an action on a bill of exchange, that it not produced or shown to be lost, or that it was promised to be lost, 6 Esp. 70, N.

**2715.** ———— If it is proved to offer to indemnify by claim on the bill.—*WOODS* (1839), Mood & M. 517, N. P.

**2716.** ———— Payment of a bill of the bill.—*DAVIS v. DODD* (1812), 4 Taunt. 602; 128 E. R.

**2717.** ———— Loss after action —In an action by bill of exchange, it brought & notice of indorsement in the bill, which was without producing it.—*SMITH* (1816), Holt, N. P. 144, N.

**2718.** ———— Loss after maturity.—Indemnity offered.—The holder of a bill of exchange by the custom of merchant by the acceptor, without to deliver up the bill, & the indorsee of a lost it, cannot, in an action the amount from the acceptor, the loss was after the bill indorsee offered an indemnity.—*HANFORD v. ROBINSON* (1827), 7 B. & C. 90; 9 Dow. & Ry. K. B. 5; 5 L. J. O. S. K. B. 242; 108 E. R. (1847), 1

*Reed* (1855), 1 K. & J. 761; 1 L. R. 8 C. P. 466

16 M. & W. 144; 14 M. & W. 144; 14 M. & W. 144; 14 M. & W. 144

No. 27

exchange has been stolen, the will grant a to refer it to the master to a notwithstanding the of the 420.

bill of exchange, having lost it, without producing it, maintain an action for recovery of its amount its arriving at maturity. by drawer against acceptor of bill of to

a bill, & that it remained lost, & that pltf not the holder or possessor of it. Reg that the bill had never been by delivery, or put in suit against deft. by pltf., that pltf. up to the of the suit was alone entitled to be the to receive the amount of it from deft., of which at the commencement of the suit had notice:

11 Jur. 715; 154 E. R. 70.

*Gorton* (1857), 1 C. L. R. 10; 10 L. J. C. P. 10; 10 L. J. C. P. 10

XXII, Sect. 11, 2, post.

Promise to pay without new (non.) An of a lost bill of exchange, if given consideration, is void.—*DAVIS v. DODD* 2), 4 Taunt. 602; 128 E. R.

of instrument. et. will for to principal & it be a rule

**2723.** ———— Or proof of Upon indorsement having the bill of to by the pltf.

6 C. B. 11 L. T. O. S. 203

but

CAN.

1 L. C. R.

1. — *Rights of loser.*

**2725. Proceedings in equity—Lost**  
**No proof of loss—No offer of indemnity.]—**No relief in equity on a lost instrument, where no affidavit of the loss, & no offer of indemnity.—**WALMSLEY v. CHILD** (1749), 1 Ves. Sen. 341; 27 E. R. 1070, L. C.

16 Ves. 430.

Wm.

**2726.** Bill by holder of a bill, alleged to have been mislaid, lost, or accidentally destroyed, for payment or an indemnity, dismissed with costs, the loss, etc., not being sufficiently proved; & proof of payment by the indorsee to the holder, & the delivery up to him of the bill, coupled with the admission of the acceptor, that he had not paid, & the usual offer of plff. upon filing his bill of the loss, not sufficient to entitle plff. to an inquiry.—**KEEL v. BRIDGEMAN** (1841), 4 Beav. 400; 19 E. R. 432.

**2727. Proof of loss—Action at law maintainable.]**—**P. v. EADON**, No. 2700.

**2728. Parties to suit—Accommodation bill.]**—The indorsee of a bill of exchange, who has accepted the bill, is entitled to a remedy against the drawer, in order to compel him to pay the bill, on the want of power or security against the forthcoming of the bill, would have been good ground for an injunction to restrain such an action. Nor is it any objection to such a suit that the bill of exchange was a bill, that plff. might have been, or that the drawer has since become bankrupt. Plff. is not bound in a ct. of equity to institute such a suit within any particular period. It is not necessary to make the drawer a party.—**DAVIES v. DODD** (1817), 4 Price, 170; Wils. Ex. 110; 110 E. R. 431, Ex. Ch.

**2729.** —A bill will lie by the holder of exchange, prior, & prior to the suit.—**MACARTNEY v. SIM**, 285; 57 E. R. 790; (1831), 2 Russ. & M. 353. **Wright v. Maidstone** (1855), 1 K. & J. 701.

In a suit to recover the amount of a bill of exchange, if the master finds in favour of the plaintiff, he will be entitled to the costs.

2728

**2731**  
 Rights of  
 Deft. in  
 upon F. & M.

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plffs. willing he M to whom they accept they are of the to of to by were entitled

**MACARTNEY v. GRAHAM** (1831), 2 Russ. & M. 353; 9 L. J. O. S. Ch. 198; 39 E. R. 429.

**Annotations:—Feld. Gerrard v. Hunter** (1837), 1 Jur. 510. **Maid. Wright v. Maidstone** (1855), 1 K. & J. 701.

**2731.** —Plff. in suit to recover the amount of a lost bill of exchange allowed his costs, on proof that he had tendered sufficient indemnity.—**GERRARD v. HUNTER** (1837), 1 Jur. 510.

**Destroyed instrument—Action at law**

A bill was filed by the indorsee of a bill of exchange praying a declaration that deft. was liable to pay plff. the amount, & a decree for payment, plff. offering to indemnify deft. against all claims in respect of it. The bill alleged that the bill had been destroyed & a forged bill substituted. Deft. filed a general demurrer, & same was allowed.

Although a ct. of equity will assume jurisdiction in the case of a lost bill of exchange upon which the acceptor cannot be sued at law, it will not do so to give relief upon such an instrument proved to have been destroyed, & upon which a remedy is open to plff. by action at law.—**WRIGHT v. MAIDSTONE (LORD)** (1855), 1 K. & J. 701; 3 Eq. Rep. 940; 24 L. J. Ch. 623; 25 L. T. O. S. 287; 1 Jur. N. S. 1013; 3 W. R. 613; 69 E. R. 642.

**2733. —Rights against acceptor.]—**B. accepted a bill of exchange drawn by R., who sent it to plffs. They returned it for indorsement to R., who burned it, & became bkpt. Upon a bill by plffs. asking that B., as acceptor, might pay the sum for which the bill was drawn:—**Held:** plffs. had no claim for relief against the acceptor, & the bill must be dismissed with costs.—**EDGE v. BUMFORD** (1862), 31 Beav. 247; 31 L. J. Ch. 805; 7 L. T. 88; 9 Jur. N. S. 8; 10 W. R. 812; 54 E. R. 1133.

(1863), 14 C. B. N. S.

**2734. Proceedings in bankruptcy—Lost instrument—Indemnity—Allowance of proof.]—**Allowed under a commission of bkpey. in case of a bill alleged to be lost, & the indemnity to be given, & to be paid by the comrs.—**Ex p. GREENWAY**, 812; 31 E. R. 1321, L. C.

**Annotations:—Feld. Champion v. Terry** (1822), 3 Brod. & Bing. 295; **Ramus v. Crowe** (1847), 1 Exch. 167; **Wright v. Maidstone** (1855), 3

**2735.** —A bill of exchange, having been accidentally lost, & bkpt. having admitted that he accepted such a bill, & it being stated that there were upon it no other names than those of the drawer & acceptor, was permitted to be proved, on the creditor giving a written undertaking, to be filed with the court, to indemnify the assignees, should another holder appear, & establish his claim.—**Re** 12 L. T. O. S. 43.



for  
bills under a  
that, had been lost by the creditor, & he not  
produce them for the purpose of his  
dividends, & an application to the Ct. of Review  
became necessary to receive them, the creditor  
to pay the costs of the application.—  
K. *Ex p. Trust* (1834), 3 Deac. & Ch.  
750, Ct. of R.

**2737. Action under Common Law Procedure Act, 1854 (c. 125), s. 87—Lost instrument—No indemnity offered—Stay of proceedings.**—Where an action is brought on a bill of exchange, which is to have been lost, a judge has no to order a stay of proceedings until an be given, debt. undertaking to pay the debt costs.—*ARAGOURN v. SCHOLFIELD* (1856), H. & N. 404; 28 L. T. O. S. 105; 156 E. R. 1. King & Zimmerman (1871), L. R. 4

**2738. Indemnity offered after action—Pleading.**—I the above sect. a plea of a bill given for A of the claim, & lost, was struck out, on plff.'s giving an indemnity to debt.—*RINGROSE v. BLIZARD* (1861), 2 F. & F. 375.

a  
b  
loss of the instrument. Plff. that  
or under the above sect. of the  
lennity given to debts. the upon  
should not be set up as a their  
which by leave of a  
the sum claimed into ct. The  
within of  
: plff.  
to of the on  
Act,  
for  
in

by reason of C. L. P. Act, 1854, not plying to that  
ct., the loss of the note might have been success-  
fully set up as a defence, the cause was one  
which that ct. had jurisdiction, & for which a plaint  
have been entered within the meaning of the  
NORLE v. BANK OF ENGLAND (1863), 2  
H. & C. 355; 2 New Rep. 307; 33 L. J  
8 L. T. 733; 9 Jur. N. S. 778; 11 W. R.  
E. R. 147.

**2740.** in an  
on a bill of the  
bill by plffs. Plffs. who had offered no in  
to  
to get the pleas setting up  
of the bill out, on their giving an indemnity  
any claims by other persons on the  
bill. The ct. made it a term of the order granting  
relief prayed for by plffs. that the  
costs of the action. KING v. Z  
71), L. R. 6 C. P. 466; 40 L. J. C. P. 278;  
T. 623; 10 W. R. 1000.

**2741. Action under 1852 Act, s. 69—Lost instrument—Indemnity—Whether loss defence to action.**—Where the holder of a Bank of England note to notify the for to the Bank of from an of the Bank will be restrained from up the loss as a defence to an action on the *GILBERT v. BANK OF ENGLAND* (1889), 54 J. P. 7 6 T. L. R. 9, D. C.

**1. Action on consideration—Lost instrument Notice of loss to drawer—No indemnity by**  
A cheque given for stock sold was lost by in going home from the purchaser was immediately informed of that fact, but refused to pay without an Four

costs in 1. L. T. 1, 1856, s. 797; J. H. & O. H. 11, C. L. J. O. S. 285. CAN.

1856, s. 69  
J. H. & O. H.

bank  
to

given—*CONNELL v.*

appl.  
*JACKY (1889)*, 12 Man. L. R. 448  
CAN.

in

L. R. 891; 35 D.

CAN.

Plff.

B  
firm.  
the h

if

The

MAN (1857), 30 L. T. O. R. 265;  
L. C. L. R. 49; 9 L. Jur. 104.—IR.

h.  
Lost

The  
is not  
the  
(1874).

of a  
to

of

as maker of a pro-  
had been lost, the  
restrained  
note as a

defence

h.

14

(1871)

a claim by any other

**1. 1. — Rights of**

was drawn stopped payment with money to answer it of the drawer's in their hands : in the circumstances an action would for the price of the stock. — **BEVAN v. HILL** N. P.

**2743. — Rights of indorsee.]**—Where ptff. traveller took a bill of exchange from deft. to whom it was previously indorsed, in payment for goods sold, which bill being of greater amount than the price of the goods, the traveller gave deft. the difference in bills, who indorsed the bill to s. in blank, & it was afterwards inclosed in a addressed to them, & put into the post, but never came to their hands, & 6 months after it became due, they sued deft. as the indorser of the bill : ptffs. were precluded from

& delivered, as deft. had full value for the bill, & might still be amount to a bond  
**TERRY** (1822), 3 Brod. N. P.  
130 ; 129 E. R. 121

**2744. — Rights of drawer—Bill not Liability of acceptor.]** Where a bill of been lost by the drawer, the acceptor in respect of  
may  
T. P. **WATSON** (1827), 4 12 Moore, C. P. 510 ; 5 L. J. O. S. C. P. 172 E. R. 772.  
Held, **Wain** v. **El**  
**Barrow** v. **Crowe** (1847), 1 Exch.

**Whether loss defence to action.]**  
The of a negotiable bill, given on account an answer to an action for the debt as on the bill.  
for goods sold & delivered, & for due to ptff. on a bill of exchange, drawn by him  
ptff. drew on deft. a bill of exchange for e to ptff.  
which deft. accepted & delivered to ptff. for of the  
of his possession, & from  
&  
to have any  
has never since the  
such bill nor known where it was to be found,  
or control over it : — **Held** :  
the on general demurrer, although it not allege that the bill was overdue, for to to be the holder of the bill & the bill ought to be due, & deft. might rely effect of title in either of these  
the

(1854), 9 Exch. 604 ; 23 L. J. Ex. 150 ; 23 L. T. O. S. 38 ; 18 Jur. 654 ; 2 W. R. 304 ; 156 E. R. 258, Ex. Ch. ; *revers*. S. C. *sub nom.* **CLAY v. CROWE** (1853), 8 Exch. 295.

**Annotations.** — **Didd.** **Widders** v. **Gorton** (1857), 1 C. B. N. S. 576. **Held.** **Charles** v. **Blackwell** (1877), 2 C. P. D. 151. **Mentd.** **Charlsey** v. **Grundy** (1854), 18 Jur. v. **Walters**, [1896] 2 Ch. 167.

**1. Action in trover—Lost instrument—Against finder—& against assignee of finder.]**—Trover for a bank bill will lie against a person finding it, but not against his assignee. — **ANON.** (1698), 1 Ld. Raym. 738 ; 1 Salk. 126 ; 91 E. R. 118, N. P.

**Annotations.** — **Consd.** **Miller** v. **Race** (1758), 1 Burr. 432. **Mentd.** **Hartop** v. **Hoare** (1743), 3 Atk. 43.

**2747. — Against discounter of bill.]**—A banker, after notice, discounted a bill drawn on a customer, & by the acceptance made payable at his bank, after it had been lost by the holder, afterwards debited his customer with the amount of the bill, wrote a discharge on it & delivered it up to the customer as the banker's voucher of his account : — **Held** : the banker was thereby guilty of a conversion, & the loser of the bill might recover in trover without a previous demand of the bill. — **LOVELL** v. **MARTIN** (1813), 4 Taunt. 799 ; 128 E. R. 545.

**2748. — Against transferee of**  
**A.** having lost a £20 bank note, it was found by who took it to **C.** to get it changed, & **C.** changed it. **B.**, being afterwards taken up on a charge of stealing the note, gave **A.** £7 as part of the change. In an action of trover brought by **A.** against **C.** to recover the value of the note : — **Held** : the action was maintainable, & the acceptance of part did not affirm the act of **B.** or waive the tort, but it only went in diminution of the damage  
**BURN** v. **MORRIS** (1834), 2 Cr. & M. 579 ; 485 ; 3 L. J. Ex. 193 ; 149 E. R. 891.

**Held.** **Rice** v. **Reed**, [1900] 1 Q. B. 54.  
3 C. R.

**— Bills generally.]** Part XXII., Sect. 10, post.

**Bank note.]**—  
Vol. III., p. 131, No. 71.

**SECT. DUTIES OF LOSER.**

**2749. To give notice of dishonour—To charge drawer—Bill accidentally destroyed.]**—The drawer of two bills of exchange, before they became due, notice that they were accidentally & was called upon to give others in  
When the bills were drawn, he had  
in of , but

delivery of a bill, which to him by **E.** It had been from the possession of s in whose hands it

**E.**

a reputation presuming a false account of the which the bill came into his possession—this script, to of

2

**SCOT.**

**—IND.**

**Last instrument**

to

**2746 H.**

**Held**  
**R.** 631 ; 45 D. L. R.

value of

the bundle was to deft. in **H.** by a per in name as **D.**, &

name of **R.** was

**H.**

to

In

**H. &**

**2746 I**

at **H.**



# PART XVI. , STOLEN, AND DESTROYED

was due, the acceptors were indebted to him to an amount less than one of the bills, & became

Held: he was entitled to notice of the r of both bills.

It is well settled that the insolvency or bankruptcy of the acceptor does not dispense with due notice of the dishonour of the bill being given to the drawer. Then, does it make any difference that the bills were destroyed before they became due? I think not; for they might still have been paid with or without indemnity, & debt, not hearing that the bills were dishonoured, might have been prevented

(1812), 3 Camp. 164, N. P.

L. R. 16 M. & W. 743.  
Notice of

Part XII.,

2750. To give notice of loss.]—Plff. was robbed of a bill of exchange

but the owner, The bill was presented at the bank by a stranger, who stated that he was the indorser, & debt, dishonoured, the judge left it to the jury to say, (1) whether they thought that plff. had done all that his duty required of him, in giving notice & making good the loss, (2) whether if due diligence had been used, & that, if they were of opinion that, if they were of opinion that

jury

144; 11 M. & P. 335; 4 E. R.

## SECT. 3. RIGHTS OF BONÀ FIDE TRANSFEREE WITHOUT

in

Bank pp. 130, 131.

Vol. III.,

2751. To payment—On giving bill of exchange was lost after it was

to left, debt. pay

XVI. SECT. 3

& R

2751 L.

u

CAN. 2752 To

T. S. 334.—6 L.

—T. S. 334.—6 L. (1834), 7 C. P. 99  
2753 L.

due on the Cas. temp

301; 23 E. R. 165.

(1877),

to

but

B. not to

of

Burr.

Win. 10.

E. 957.

A. R.

J. 4 D. & Ald

L. R.

v.

K. C. 166, n. e. Jones  
8 C. H. N. 8. 312.

T. S.

2753. with a l

From drawer.]—If a bill of exchange is received

K. H. 633;

E. H. 402.

J. H. 101

B

2754. — Loss advertised.]—If a bill has been lost, & the loser has advertised it in the newspaper & it is discounted for the person who found it, so came fraudulently by it, this entitles the person discounting it to recover the amount, if done & without notice of the way by which the bill was obtained or became possessed of it. 1 L. 4 Exp. 60, N. P.

2755.

Absence of fraud

on his

Ry. N. P.

50, N. P.

L. C. R. 184. CAN.

2756 need

L. R. 184

payee's

the

u R.

by

or

still

L. & 1

due

(1812),

L. R. 621;

Sect. 3.

**2756. Note not produced—Non-negotiable note.]** The maker of a non-negotiable note cannot refuse to pay the amount when due, on the ground that the payee has not got it in his possession or power, & cannot produce it for the purpose of delivering it up to the maker on payment. *WAIN v. BAILEY* (1839), 10 Ad. & El. 616; 2 Per. & Dav. 507; 113 E. R. 234.

*Barrow v. Crowe* (1847), 1 Exch. 167.

**2757. Bill taken without inquiry—Or reasonable caution.]** The drawer of a bill of exchange, after it was accepted, put an indorsement in blank on it, it in a parcel directed to go into the hands of the broker. On the next day the bill was taken to a bill broker, & requested him to discount it. The broker took time for two hours to make in-

quiry, and found that the bill was not a bill of exchange, but a bill of lading, and that the drawer had put a name on the back of the bill, which was not his name, but the name of a person whose address, or the manner of the bill, & did not know the numbers of the notes, which the bill was made. The bill was taken to the broker & by him paid: *Held*: the bill broker acted with reasonable caution, and could not maintain an action against the acceptors. *GILL v. CURTIS* (1824), 3 B. & C. 460; 5 Dow. & Ry. K. B. 324; 3 L. J. O. S. K. B. 181; 107 E. R. 800.

*Fold. Snow v. Peacock* (1826), 3 L. J. 15.

*Verd. v. B. & C.* Ad. 1008. *Re*

*H.F.*

16 M. & W.

*C. & P. 11;*

*Held*  
*r. Smith*  
*D. 7*

*H.*

*H. D.*

**2758. Bill taken for £1,000, in Apr., for change to, by a person with, but who was, & he changed it by, any of it.**

The bill was received by the bank, & the bank paid it. The bank was not liable for the loss of the bill, as it was not a bill of exchange, but a bill of lading, and the bank was not a bill broker.

**2759.**

from

with  
stolen

*v. THRELFALL* (1823), 5 Dow. & Ry. K.

**2759. Overdue cheque.]**—The owner of a cheque drawn upon a banker for £50 having lost it by accident, it was tendered 5 days after the date to a shopkeeper in payment of goods purchased to the value of £6 10s., & he gave the purchaser the amount of the cheque, after deducting the value of the goods purchased. The shopkeeper the next day presented the cheque at the bankers, & received the amount. In an action brought by the person who lost the cheque against the shopkeeper to recover the value of the cheque:—*Held*: (1) the jury were properly directed to find for plff., if they thought deft. had taken the cheque in which ought to have excited the suspicion of a prudent man; (2) the shopkeeper taken the cheque 5 days after it was due, it was sufficient for plff. to show that he once had a property in it, without showing how he lost it.—*DOWNS v. HALLING* (1825), 4 B. & C. 330; 6 Dow. & Ry. K. B. 455; 3 L. J. O. S. K. B. 234; 107 E. R.

*Consid. Snow v. Peacock* (1826), 3 Bing. 406; *Wilson v. Moore* (1834), 1 My. & K. 337; *Calland v. Loyd* (1840), 6 M. & W. 26. *Distd. Robinson v. Hay* (1846), 9 Q. B. 52. *Distd. Bank of Bengal v. Fagan* 5 Moo. Ind. App. 27. *Consid. London & County Co. v. Groome* (1881), 8 Q. B. D. 288. *Held. Serrell* *Derbyshire, Staffordshire & Worcestershire Ry.* 10 C. B. 811; *Raphael v. Bank of England* (1855), 17 C. B. 811; *Joint Stock Bank v. Simmons*, [1892] A. C. 513; *r. Smyth* (1831), 7

Overdue bills generally, *see* Part XI., Sect. 0, 1, *ante*.

**2760. Suspicious circumstances.]**—A trader in London took a bill of exchange in part payment for goods, of a person representing himself to be a tradesman from the country, & to have been recommended by a customer, & sent the goods, in consequence of an order from the buyer, to a public-house, which was not a booking office, without making any inquiries except as to the respectability of the acceptor. The bill turned out to have been stolen, & in an action by the trader against the acceptor, deft. had a verdict, on the ground that plff. had taken the bill out of the ordinary course of trade, & in circumstances which ought to have excited his suspicion.—*SLATER v. WEST* (1828), 3 C. & P. 325; *Dan. & Ll.* 15.

**negligence.]**—To an action by indorser of a bill of exchange, who had lost the bill by accident, it is a good defence that plff. took the bill fraudulently, or in such circumstances that he must have known that the person, from whom he took it, had no title, or that plff. was guilty of gross negligence in taking it; but it is no defence that he took it in circumstances in which a prudent & cautious man would

5 B. & Ad. ; 3 K. B. 188; 110 E. R. 1099.

3

& R.

16, 1 Y. &



**2762. Bill torn & thrown away—Bill again put into circulation.]—**A. accepted a bill & gave it to B., who put his name thereto as drawer, for of his procuring it to be discounted over the proceeds to him. B.

to discount it, returned the bill to A., who tore the bill in half, intending, as the jury found, to cancel it, & threw the two pieces into the street. B. picked them up in A.'s presence, & afterwards pasted the two pieces together, & put the bill in circulation. The tearing of the bill was done in such a way that the appearance of the bill was as consistent with its having been divided for the purpose of safe transmission by the post as with its having been torn for the purpose of . . . it:—*Held*: A. was liable upon the bill at the suit of a *bona fide* holder without notice. *INGHAM v. PRIMROSE* (1859), 7 C. B. N. S. 82; 28 L. J. C. P. 294; 5 Jur. N. S. 710; 141 E. R. 745.

*Annotations*: *Didd*, *Forster v. Mackinnon* (1869), L. R. 4 C. P. 701, *Proc. Générale v.*

L. T. . . . . J. B. D. 1 Q. B. *Didd*. *Nash v. Freville*, [1900] 2 Q. B. 72 *Consol. Lond. Joint* *v. Premier*, [12 K. B. 18] A. 737

H. & N. 603.

A. C. 514; [1917] 2 K. B. 4 L. J. C. P. 113, *He* . . . *Cane* (1876), 34 L. T.

**2763. Forged indorsement of crossed Whether transferee negligent.]—**Pltf.

on his bankers, M. & Co., payable to it "L. & C. bank," & sent it for from whom it was stolen & his i

It was ultimately pas *bona fide* in ignorance of the it to his country the L. & J. bank,

it from M. & Co., who either did not using "L. & C. bank."

it was paid deft. gave value for it anwhile pltf., at the p had sent him a second cheque for the same amount, which also was paid by M. & Co., & pltf.

both cheques. Plt an action for the amount of . . . for money had & received by deft., jury found that all the parties concerned, & deft., viz., pltf., M. & Co., & the payee, had guilty of negligence with regard to the payment of the first cheque:—*Held*: the first cheque had been paid by M.

authority, because they had paid it to the l. could maintain the action

**2764**

In C indorsement.

for the bondl . . . pltf.

not

L. T.

7

n.—IND.

&

who had acquired no title to the cheq *BONNETT v. PINKETT* (1876), 1 Ex. D. 368 L. J. Q. B. 555; 34 L. T. 851; 24 W. R. 711.

r.

ii.

**2764. Blank**

blank acceptanc

authorized

H. in his

ho

blank

in the

in

which he it. Deft. put it

of writing

unlocked, & it was or C.

in his own name without de authority, & an action was brought on it by

for value:—*Held*: deft. was not liable on the bill.

*BAXENDALE v. BENNETT* (1878), 3 Q. B. D. 525; 47 L. J. Q. B. 624; 40 L. T. 23; 43 J. P. 204; 20 W. R. 890, C. A.

Bank v.

Bank v.

[12 K. B.

W.

or

34 L. T.

18) A. C. 777

20 (38) D. 611

P. L. R. 170

Mac. 1

[19 L. J. Q. B. 713;

A. C. 514, *Watkin v.*

*v. Wheeler*, [1902]

*Stock Bank v. Macmillan &*

*Menid, Re Cooper, Cooper v.*

*v. Temperance*

R. *De Freville*, [1900] 2 Q. B. 7

183.

i. Part VII.

To retain instrument—After

of

owner of a

it,

which has i, has no title to it

at

a holder for value,

he has

was a

of

from his

), on

the

to have

bond having passed into the hands of *bona fide* holder for value, C.

H. to recover it:—*Held*: the proviso in Act, 1881 (c. 96), s. 100, not only prevented a summary order being made for the restitution of a it, but was an

brought to recover such

*v. Hill & Son* (1882), 62 L. J. Q. B.

L. T. 304; 47 J. P. 324; 31 W. R.

*Cox, C. C.* 258, D. C.

On

B.

at

&

by

A.

return of

with

H.

A.

A.

e.

L.

## Part XVII. — Bills of Exchange in Sets.

Act, ss. 71.

**2766. Acceptance of first part conditionally & second part unconditionally—Liability on second part.]**—The drawer, who was also payee, of a bill of exchange drawn in three parts, gave one part to a creditor to retain in his hands until some other security was for it, & afterwards accepted & indorsed another part for value to a third person. The acceptor substituted another security for the part first accepted, whereupon it was given up to him: *Held*: (1) in the circumstances the holder of a part secondly accepted

bill against

PANKE, J.) the acceptor would be liable on the part secondly accepted, had

HUNTER (1830), 10 H. & C. 449; 1 L. & Welsb. 163; 5 Man. & Ry. K. B. 393; 8 L. J. Q. S. K. B. 149; 100 E. R. 517.

1863), 3 H. & C.

**2767. Cancellation of first & second of new second parts—Rights of holders of new**

Nov., 1841, drew upon D. & Co., debts.

In Liverpool, a number of bills in two parts, & requested them to accept & send them to D. & Co., the London bankers of debts, to be by them at the disposition of the holders of

at the D. & Co., payable in London, the firsts with G. & Co. D. & Co. wrote across the bills a word of acceptance & transmitted them to be held at the second, &

& Dec. 8, informed N. of what they had done. At the time the firsts were so remitted to D. & Co. N. had sent the seconds to F.

They were received back by N. on Dec. 8 & 13, & by him. On Dec. 4 N. wrote to G. & Co. requesting them to hand to D. & Co. all the firsts by him upon them & handed to

to all the firsts which remained on their hands. G. & Co. wrote to D. & Co. that he had annulled the firsts to G. & Co.,

D. & Co. to replace the firsts in G. & Co. to be held as before. G.

D. & Co. pursuant to the letter of the 4th, & D. & Co. on the 10th cancelled the acceptances. On Dec. 18 D. & Co., Dec. 7, wrote to

G. & Co. returned to us, were & it would hardly do to

to-day written to G. &

to us when they are presented to them." On Dec. 21, 22, & 23 N. issued what purported to be bills to intermediate indorsees, from whom afterwards received them for value in due course of business, the intermediate indorsees having no knowledge of the correspondence, except that N. represented to them that the firsts had been accepted. In an action by the holders against D. & Co.: *Held*: the acceptances were by the letter of Dec. 4 being acted upon to the intention of the drawer, & the indorsements of the new seconds to plff. conferred no right against D. & Co. — RALLI v. DENNISTON (1851), 6 Exch. 483; 20 L. J. Ex. 278; 17 L. T. O. S. 127; 155 E. R. 633.

v. TUCKER (1867), 8 H. & C. 530.

**2768. Agreement to pay after delivery up of Necessity for all parts to be delivered up.]**—Defts. agreed to pay plff. certain instalments 1 month after plff. should have delivered up to defts. certain bills of exchange mentioned in a schedule to the agreement, plff. also agreeing to deliver up at his own expense from the holders such of the bills as were in his own possession. In

the bills, two were drawn by M. in favour of plff. for £100 & £200 respectively. The two bills, being foreign bills, were drawn in three parts, & plff. had delivered up to defts. part of one bill & two of the other, & gave evidence that three of the other parts had miscarried on their way from London to Panama, & from Panama to London, & could not be found. By the agreement plff. agreed to indemnify defts. from all claims by reason of non-payment of any of the bills. In an action to recover the last instalment *Held*: plff. was not entitled to recover until he had delivered up all the parts of the bills. KEARNEY v. WEST GRANADA GOLD & SILVER MINING CO. (1856), 1 H. & N. 412; 26 L. J. Ex. 15; 5 W. R. 200; 155 E. R. 1202.

**2769. Possession of one part—No warranty of possession of other parts.]**—A foreign bill of exchange was made in four parts by A., & was indorsed by the payee to B., who indorsed to defts., who indorsed to C., who indorsed to plff. The first of the four parts only came into the possession of plff., & he having lost that part brought an action against defts. for not delivering over the other parts. Only the first part had ever come into the possession of defts., nor were they able to obtain possession of the others: *Held*: no action lay against them, as there was no obligation on them to hand the other parts to plff. — RICHARD v. KLOCKMANN (1863), 3 B. & S. 388; 1 New Rep. 260; 32 L. J. Q. B. 82; 7 L. T. 625; 11 Jur. N. S. 599; 11 W. R. 260; 122 E. R. 147.

**2770. Indorsement of all parts—Issue of spurious bills—Liability of indorser.]**—Bills drawn at Paris & Lille. Defts.,



to S., a customer, by indorsing foreign bills for him, which, when indorsed, he sold, so that he might gain by the rate of exchange. & defts. used to collect the purchase-money from the buyers, & place it to the credit of S. in the bank books, without deriving any advantage except an occasional commission on the transaction. Upon Dec. 14, S., in the above course of dealing, brought to defts. the first & second parts of a bill in two parts, dated Dec. 13, & drawn by W. on Lille for 47,500 francs "at eight days' date." Both parts were alike, save that one purported to be a first, the other a second part. Each bore a full *valorem* stamp. Between the words "eight" & "days" there was a blank space, in which several letters might be inserted. Defts. indorsed both parts, intending them to form one bill, & returned them to S., who thereafter agreed for the sale of same to plffs. through C., their broker, whom S., contrary to the prohibition of defts., employed to negotiate bills. In performance of the agreement the second part, marked "first with the drawee," was sold note dated

& signed by C., & drew upon plffs., received payment for the bill, & placed the amount to the credit of S. paid the bill on the faith of the believing that defts. were the vendors. It was afterwards discovered that a spurious second part, had been by S. or C. sold to M. for value, that the genuine second part had been altered by forging a "y" to the end of word "eight," & that a spurious first part had passed to the drawees at Lille. Plffs. obtained such second part in addition to that held, sued as holders of the bill, & to recover defts. the sum paid, alleging failure of collection. Defts. resisted the action, on the ground of the forged & unauthorised indorsement: *Held*: (1)

indorse only one bill in two parts, & had but one bill, plffs. were not entitled to recover without holding both genuine parts, unless induced by negligence from settling

(2) indorsing both parts of a bill, with a full stamp, with

forgery, & complicity in the sale of an

(3) there was no privity between the parties to the transaction was not the

L. T. 21 W. R. 335.

(1) A. C.

Duty to  
Part XIV., Sect. 7.

2771. Holder for value of second part of first part—First part held as security for not made.]—C., a bill broker in

to  
as  
an  
relations

with the H. bank at A. of three bills which had H. by which bank to of the bank C. then the had been they at were for on -ls. plffs. of the sec H. bank. or

T. L. R. 2

2772. Trover for second part—By indorsee—First part not in hands of indorser.]—Trover for a bill of exchange for £1,000, drawn by persons in upon defts., in favour of M., & by him to plff. Plff. gave notice to C. to produce the bill, which appeared to be the of a set of bills drawn in favour of M., & dated 5, 1792. Plff. proved that on Oct. 31,

nearly 11 months after the date of the bill, he presented it to defts. for acceptance, & upon a subsequent demand they refused to return it. Defts. proved that L. had absconded in Sept., 1792, that after he had absconded, plff. purchased a debt due from L. to H. & Co. for 10s. in the pound, & obtained the attach property of L. in in the M., that before the laid M. in Jamaica, via M. had first of

to L., that in we of 1 the 1 first bill did not come of his assignees, he being dkpt., Nov. 1793, that in the meantime, plff. having heard of the of the first bill of the set, & that it had its appearance, wrote out to Jamaica, by an indemnity, prevailed upon M. to transmit the second of the bills to arrived on Oct. 31, 1793, & was retained by upon presentation, in consequence of a them by the assignees of that a 1

first bill indorsed to L. was discovered. The bill was produced in ct., & it to be the first bill of the same set, of was claimed by plff.:—*Held*: to a verdict, because the sum (that bill represented had never been attached hands of M., he having indorsed & trans- the first bill to L. before the attachment perate, & the property represented by that in in L. or his assignees, & the indorser

who had no bills represented, and B. & C. 450, n.; 109 E. R. 1

# Part XVIII. -- Conflict of Laws.

OF

## FORM.

2 Act, s. 72 (1).

1. **Bill drawn in France not in French form--**  
**Failure of action in France--Recovery in English**  
**court.** A holder may recover in an English ct.  
on a bill drawn in France on a 1  
though, in consequence of its not being in  
form required by the French code, he had  
in an action which he brought on it in France.  
WYNNIE v. JACKSON (1826), 2  
L. J. O. S. Ch. 55; 30 S. R. 308, L. C.

(1901) 1 K. B. 211

**2774. Bill drawn in France in French language--**  
**in England in English money.**—A bill of  
drawn in France & in the  
to English form  
in

in L. J. Ch. 1 T. L. R.  
Dist.  
Comm.  
1871 L. R.

forcing "Requisites in form" of bill

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XVIII. SECT. 1

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TOWN N. 1871, U. C. R.

29 R. made abroad--Payable in

XVIII. SECT.

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the amount of the bill so paid by them. The  
American ct. held that the case must be decided  
according to the law of England. Pltfs. then  
brought an action in England, claiming declara-  
tions that they did not, by presenting the bill for  
acceptance with the bill of lading attached, warrant  
or represent that the bill of lading was genuine, &  
that they were not bound to repay the amount of  
the bill. According to the American law as it  
sared to the ct. the bill of exchange was not  
egotiable instrument, but was conditional on  
genuineness of the bill of lading:—*Held*: (1)  
having regard to 1882 Act, s. 3 (1), the question  
whether the bill was conditional or not was a  
question relating to the "requisites in form"  
within s. 72 (1), & must be determined by the  
ican law, & defts. were entitled to recover  
money back; (2) the expression "enforcing  
ent thereof" in s. 72 (1) (b), did not include  
the obtaining of a declaration that the holder of  
a bill who had been paid was entitled to retain the  
y, & as the action was brought by pltfs. for  
not of obtaining payment, but of  
defts. from getting the money back,  
did not apply. GUARANTY TRUST CO.  
OF NEW YORK v. HANNAY & CO., (1918) 1 K. B.  
43; 117 L. T. 754; 33 T. L. R. 559; *reversd.* on  
1918] 2 K. B. 623, C. A.

Re  
K. B.

## 2. -- NEGOTIABILITY.

**2776. English payable to bearer--Transfer**  
**in foreign** A promissory note payable  
to the bearer, made in England:—*Held*: transfer-  
by delivery in a foreign country. DE LA  
METTE v. BANK OF ENGLAND (1829), 9 B & C.  
Dan. & Ll. 318; 7 L. J. O. S. K. 1  
E. R.

9 H. & A.

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(1851, 4  
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**2777. Proof of--Note made in Belgium.**—At  
trial of an action on a promissory note the  
that it was not negotiable, & experts were  
to prove that by Belgian law the note was  
negotiable. The jury being unable to make up

but not to order. It was in-  
a England by the payee to an  
indorsee & by him to  
an English bank. In a  
by the Scottish party of

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law, plff. was entitled to recover by law, & judgment had been given for him.—*NOUVELLE BANQUE DE AYTON* (1891), 7 T. L. R. 377, C. A.

**2778. Colonial bond to bearer containing on land—Held by bailee in F** bond to bearer, even though containing a lien on property in such colony, if negotiable by the law of such colony, is also negotiable in the country such bond is physically situated; & as the holder of such bond must get a good receipt when he can deliver it up, where such actually in England at the death of the estate duty is payable in respect of such A.-G. v. *GLENDING* (1904), 92 L. T. 87. *Annotation—Mentz. Winans v. R.*, (1905) 1 K. B. 1022.

### SECT. 3.—CONSIDERATION.

*See, generally, Part X., ante.*

**2779. Validity of—Gaming or wagering debt abroad—Bill payable in England—Governed by English law.**—A bill of exchange, given in payment of a gaming debt incurred in France, payable in entirely an English by the local law.—*ROBINSON v. BLAND*, 1 Wm. Bl. 256; 2 Burr. 1077; 90 E. R. 141.

*Reid. Re Tye, Ex p. Guilbert* (1839), 1 L. J. Rep. 25; *re Kenble* (1849), 6 Moo. P. C. C. 311; *Brook v.*

H. D.

*Shute* (1770), 2 Wm. Bl. 695; *Terrell v. White* (1841), 12 Q. B. 284; *Mentz* (1789), 1 Term Rep. 454; *Leapridge v. Lepp* (1841), 3 Camp. 119; *Calton v. Cockayne* (1811), 3 Camp. 119; *Calton v.*

### PART XVIII. SECT. 3.

2779

in New York, drew a upon a firm in Toronto, to the order of a New York firm. The domicile of debt. was at in Ontario, & the drawer The draft was

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given for an illegal Act, 1835 (c. 41), s. 1, *Moulin v. Owen*, (1907) 1 K. B. 740; 76 L. J. K. B. 396; 96 T. L. R. 348; 51 Sol. Jo. 300, C. A.

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consideration. Sects. 4 & 5.]

BROWN v. BAILEY (1908), 24 T. L. R.

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2783. — Money won at of gambling, in a country where the games in question are not illegal, may be recovered in the English ct.; & where an ascertained portion of a balance of which an I.O.U. had been given, was admitted to consist of money lent for the purpose of playing public tables in Germany, but it did not appear that the games played at such tables were for by the laws of that country, the ct. dis-

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LITTON (1842).

147; 12 L. J. Ch. 57; 6 Jur. 959; 41 E. R.

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L. T. 679  
Moull v. *Re*  
Housillon v. Housillon (1880), 42  
Lustman v. Gerson, [1903] 2 K. B. 114;  
[1911] K. B. 144;  
; Re

2784.

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179; T. L. R. 440; 53 Sol. Jo.  
Moult. Soc. des Hôtels

C. A.

2785. — Fraud & duress.]—P'tis., keepers in France, obtained from deft., a young Englishman of twenty-two years of age, who had been staying at p'tis. hotel, an English cheque payable in England, by a threat of criminal proceedings in France if it was not given, & a tion that no such proceedings would be taken if the cheque were given:—Held: payment cheque could not in the circumstances be in an English ct.—SOCIÉTÉ DES HÔTELS ANONYME v. HAWKER (1918), 29 T. L. R. C. A.

GAMING &

#### SECT. 4.—LIABILITY OF PARTIES.

See, generally, Part XIII.

1. General rule.]—If a bill of exchange is drawn in one country & payable in another, & the bill is dishonoured, the drawer is liable, according to the *lex loci contractus*, & not the law of the country where the bill was made payable, but a bill is drawn generally, the liabilities of

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**KIMBLE (1848), 6 Moo. P. C. C.**  
**R. 704, P. C.**

**Annotations:—***Expt. Label v. Tucker* (1861), L. R. 2  
 77. *Comd. Rouquette v. Overmann* (1878), L. R. 10 Q. B.  
 525; *Alcock v. Smith* (1893) 1 Ch. 228. *Expt. v.*  
*Fremont* (1853), 9 Rich. 24; *Shayles v. Richard* (1851),  
 1 H. & N. 57; *Bransley v. S. B. Ry. Co.* (1862), 12 Q. B. N. S.  
 83; *Hirschfeld v. Smith* (1866), 24 L. J. C. P. 117;  
*Chasnov v. Meier* (1865), 1 T. L. R. 213; *Re Commercial*  
*Bank of South Australia* (1867), 36 Ch. D. 322. *Expt.*  
*Sheppard v. Bennett* (1876), L. R. 3 A. & E. 167; *Horne*  
*v. Rouquette* (1878), 3 Q. B. D. 314.

XIII., Sect. 11,

1882 Act, s. 72 (1)

Part XI., ante.

**2787. Indorsement abroad—Invalid there.**—

A promissory note was made in France by deft., a French subject, & then domiciled in France. The payee of the note indorsed it in blank, which mode of indorsement was, by Code de Commerce, ss. 137, 138, invalid, & passed no property. The holder, an English subject, sued deft., then residing & carrying on business in London:—*Held*: pltf.'s right to recover was to be decided, not by the law of England, but by that of France, & as the law of the latter country, in the circumstances, would give pltf. no right of action, neither could he maintain one in the English etc. — **TRIMNEY v. VIGNIER** (

; 3 L. J. C. P. 2 131 E. R. 1075.

1867), L. 3 B.  
 C. P. 473.  
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**2788. Place of issue—Delivery in England—made abroad.**—

Deft., a resident in Florence, signed two there, as joint & several maker with his brother in London, to whom he sent them by post. His

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 1), s. 18.—**CHAPMAN**  
 6 New Rep.  
 18; 12 L. T. 700; 11 Jur. N. S.  
 1 R. 643; 150 E. R. 774.

**—Indorsement invalid where**

**in England.**—On a bill of order, drawn, accepted, the contract of the accept— an order valid by the law of England, & an maintain an action in

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, who also drawer & , at the the bill made & , subjects of & domiciled in country what were the rights of

or 77; 8 H. & N. 830; 37 L. J. Q. B. 46; 17 L. T. 244; 10 W. R. 3

B. C. P. C. Dmd.  
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c. 1071 K.

**2790. Bill drawn in Brussels & accepted in England—Indorsement invalid where made—Liability of acceptor in England.**—

Code de Commerce, art. 137, required that the indorsement of a bill or note should be dated, express the & the name of the indorsee, & art. that if the indorsement did

as, it should not operate as a of the bill, but only as a procuration. A bill drawn by A., in Brussels, on deft., in by deft. in London. It by A. in Brussels, to C., & C. in to D., & by D. to E., who there it in L., who resided in L.

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XVIII. SECT. 8.

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*v. De Rix* (1870), L. R. 5 C. P. 478; 39 L. J. C. P. 254; 22 L. T. 623; 18 W. R. 931, Ex. Ch.

*Distd.* *Lee v. Abdy* (1886), 17 Q. B. D. 399; *Smith*, (1892) 1 Ch. 278. *Reid*. *Smallpage's & Co's Case* (1885), 30 Ch. D. 598. *Montd.* *Mare v. Roux* (1871), 31 L. T. 372; *Embiricos v. Anglo-Austrian* [1 K. B. 677].

**2791. Bill drawn in France & accepted in England—Indorsement invalid where made—Liability of acceptor in England.**—A bill of exchange was drawn in France, by a Frenchman, in the French language, but in English form, upon & accepted by an English co. in London. The bill was indorsed by the drawer in France, in the French language, to the order of A., an Englishman, & sent to him in England: *Held*: (1) as between a subsequent indorsee & the acceptor, the bill as an English bill; (2) the acceptor in England, dispute his liability on the indorsement to A. was

30 Ch. D. 598; 55 L. J. Ch. 1 T. L. R. 627.

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**2792. Bill drawn, accepted, & payable in Norway—Bill sold when purchaser.**—A bill of exchange, drawn & by English firms, & payable in Norway, was indorsed in Norway by the payee to the order of M., who indorsed it in blank, & handed it to A., for A., & for an English firm of A. & Co., in which A. & J. were partners. It was seized by

by auction to M., who sold the bill in to K. without any notice of infirmity of the bill: *Held*: (1) as the question was, which two persons was entitled to receive payment & Act, s. 72, did not apply by the country (Norway) where the bill was drawn, that law, the equitable claim of A. was not be sustained. *ALCOCK v. SMITH*, 238; 61 L. J. Ch. 161; 66 L. T. 126, T. L. R. 222; 30 Sol. Jo. 109, C. A.

*HANK*, (1905) 1 K. B. 677; (1901) 1 K. B.

**with Paris branch—Payment by Paris branch—Forged indorsement—Liability of London branch.**—Defts. carried on business in branch in Paris. A cheque was drawn in London in favour of plffs. by plffs. to a firm in London, & that firm, but it never reached them. After

& it in by a to who had no

the cheque, & sent it to their bank in London, who credited their bank in Paris with the value. The bank refused to deliver the cheque to the cheque, when it reached defts., was generally. In an action for conversion of the cheque:—*Held*: (1) defts., by paying the cheque, & forwarding it to their London bank, & crediting their Paris bank with the value, were guilty of a conversion of the cheque in England, & the case was governed by English law; (2) defts. were liable, under 1882 Act, s. 24, for the value of the cheque. *LACAVE & CO. v. CRÉDIT* [

514; 13 T. L. R. 60; 2 Com. Cas.

G. W. Ry. v. 1900] 2 Q. B. 464. *Distd.* *Embiricos v. Bank*, (1905) 1 K. B. 677. *Reid*. *Gordon v. London City & Midland Bank*, *Gordon v. Capital & Bank*, (1902) 1 K. B. 242.

**2794. Cheque drawn abroad on bank in England—Indorsement forged—Cheque stolen—Rights of bona fide holder for value.**—The rule of international law, that the validity of a transfer of movable chattels must be governed by the law of the country in which the transfer takes place, as to the transfer of bills of exchange or by indorsement. *Semble*: the indorsement of a bill of exchange in a foreign country, valid under the foreign law but invalid under English law, would be effectual to give the indorsee a good title to the bill as against the drawer or

2 Act, s. 24, does not apply to an of a bill of exchange abroad. That sect. is declaratory of English law, & does not control general rule of international law.

A cheque on a London bank was drawn in Roumania in favour of plffs., who the same day specially indorsed it to a firm in London, & placed it, with a letter, in an envelope addressed to that firm in London. The cheque was stolen from the by one of plffs.' clerks. The cheque was at a bank in Vienna by a person who that it might be cashed. It then bore an , which purported to be that of the , but which was in fact forged. The , acting in good faith & without negli- , cashed the cheque, & then indorsed it to in London, & sent it to them by which it was drawn. Plffs. sued defts. for damages for the wrongful conversion of the cheque. By the Austrian law defts. had a good title to the as bona fide holders for value without gross care: *Held*: the Austrian law must prevail, the transfer of the cheque having been made in that country. *EMBRICOS v. BANK*, (1905) 1 K. B. 677; 74 L. J. K. 122 L. T. 305; 33 W. R. 306; 21 T. L. Jo. 281; 10 Com. Cas. 99, C. A.

**Bill payable to order of Hamburg banker—Indorsed to broker in London "für mich"—Whether indorsement open or restrictive question of German law.**—A bill of exchange was drawn on defts. to the order of R., a Hamburg banker. R. indorsed the bill to plffs., bill brokers in London, with the words "für mich." On presentation

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was dishonoured & returned to pliffs. In action for the amount due on the bill it was tended that the indorsement was restrictive:—*Held*: (1) the question was one of foreign law & must be treated by the English cts. as one of fact; (2) on the evidence it was clear that by German law this was an open indorsement.—*HAARBLEICHER v. BARNHELMAN* (1914), 137 L. T. Jo.

till Sept. 5, 1871. On that day was presented to the & it was duly protested, & due notice of dishonour, given to all the parties:—*Held*: defts. were at the suit of their indorsee for *r. OVERMANN* (1875), L. R. 10 Q. B. 525; 44 L. J. Q. B. 221; 33 L. T. 420. *Annotations*: *Consol. Cassinova v. Mier* (1885), 1 T. L. R. 213.

#### Bill drawn by enemy firm in England Payable in enemy country.

—Bills accepted payable in an enemy country after the outbreak of war had been drawn by an enemy firm carrying on business in England, & purchased from the firm before the war by an English bank, in whose hands they remained unpaid. The due date to the tenor had passed, but presentment had not been made. *Held*: the maturity of the bills till further notice, & in the case of British creditors forfeited interest between the original due date & the end of the period of postponement. On a claim by the bank against the assets in a winding up of the business of the firm under Trading with the Enemy Amendment Act, 1916 (c. 105): *Held*: the due date, being determinable by the law of the enemy country where the bills were payable, had not yet arrived, & the claim failed. *Re FRANCKE & RASCH*, [1918] 1 Ch. 470; 87 L. J. Ch. 273; 118 L. T. 211; 34 T. L. R. 287; Jo. 438.

### 6.—DUE DATE.

See 1882 Act, s. 72 (5).

**2796. Decrees extending time of payment—Bill drawn in England—Payable in France.**—The contract, which a party transferring for value the property in a bill of exchange makes with the transferee, is that he warrants that the bill, having been accepted by the drawee, shall, on being presented at the time it becomes due, be paid, i.e., he engages as surety for the due performance by the acceptor of the obligations which the latter takes upon himself by the acceptance. The liability of the transferor is to be measured by that of the acceptor, whose surety he is, & as the obligations of the acceptor are to be determined by the *lex loci* of performance, so also must be the

A bill of exchange was drawn & indorsed by defts. in England upon French subjects resident in Paris, & was accepted by them in Paris. The bill on the face of it was payable on Oct. 5, 1870, but before that date the Emperor of the French, in consequence of the war with Germany, enlarged the time for the payment & protesting of current bills of exchange for 1 month, & the time was afterwards enlarged from time to time by the Govt. of France for the time being. By the time the bill was presented to the drawee, the time of time defts. bill did not

### SECT. 7. DUTIES OF HOLDER.

#### S. 1. PRESENTMENT FOR PAY.

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*infra*, Part XII., Sect. 2,

### PART XVIII. SECT. 6.

#### 1. Decree extending time of pay

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### PART XVIII. SECT. 7.

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**1. 7. Duties of holder: Sub.****2. NOTICE OF**

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See, Part XII., 4, ante.

**2798. To English indorser—Bill drawn upon & dishonoured in Paris.]—Qu.** : at what time notice of dishonour must be given to an English indorser of a bill drawn upon & dishonoured by a party in Paris. **Qu.** : whether a custom can be established to vary the time for giving notice of dishonour in a case from both the English rule & the law. **Hornschuld v. Hannes** (1838), 1084.

**Bill drawn in England—Accepted in**

In an action by indorsee against payee indorser of a bill of exchange drawn in England & accepted by, a French house, both plff. & being domiciled in England: **Held**: (1) due notice of the dishonour by the acceptor was of the contract, & the bill, by the acceptor abroad, & the *lex loci contractus* must prevail: (2) it lent for plff. to show that he had deft. such notice of the was required by the law **CURRIE** (1841), 1 Q. B. 43; 4 Per. & Day, 737; 10 L. J. Q. B. 77; 5 Jur. 805; 113 E. R. 1045.

**Smith** (1848), 6 M. & W. 1; 1 L. J. 1.

**PART XVIII. SECT. 7.**

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**e. Rouquette** (1875), 3 Q. B.  
**Meter** (1853) 1 T. R. 111.  
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**Campanova v. Gibbs v. Fremont**  
**Tucker** (1867),  
37 L. J. C. P.

—In an action by holder against indorser of a bill of exchange, drawn by a Frenchman in England, & directed to & accepted by a Frenchman in France, payable in France, & indorsed by the drawer in blank, & delivered to deft., an Englishman, in England, who indorsed in blank & delivered to plff., a Frenchman, in England, who indorsed & delivered to B., a Frenchman, in France: **Held**: the bill was a French bill, & it was sufficient for plff. to show that he had given deft. notice of dishonour in accordance with the law of France. **HIRSCHFELD v. SMITH** (1866), 1 L. R. 1 C. P. 340; Har. & Ruth, 284; 35 L. J. C. P. 177; 14 L. T. 886; 12 Jur. N. S. 523; 14 W. R. 455.

**Coned. Rouquette v. Abbott** (1872), 26 L. T.  
**Horne v. Rouquette** (1878), 3 Q. B. D. 514. **Reid.**  
e. De Bm (1868), L. R. 3 C. P. 53

**2801. Payable in Spain.]—A bill of exchange drawn in England, & payable in Spain, was indorsed in England by deft. to plff., who indorsed it to M., residing in Spain. Acceptance having been refused, a delay of 12 days occurred before M. wrote to inform plff. of the dishonour. On receipt from M. of the notice of dishonour, plff. gave immediate notice to deft. No notice of dishonour, by non-acceptance, was required by the**

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Canadian statute, under which a

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**THURTELL v. J. C.** (1  
C. P. 430. **-CAN.**

A deposit  
by law of  
negotiable & of same as a  
able on  
by a bank in Minnesota in favour  
plffs. for  
on Oct. 30, & was sent on the  
bank there for

the certificate to plffs.  
bank had suspended pay-  
communication did not  
till Nov. 2, & on that day  
deft. by letter that the  
had been returned unpaid.  
for

After 5 days, receiving  
sent the certificate  
in Minnesota, who on  
it to debtor bank



law of Spain :—*reus* : *plff.* was  
the amount of the bill.

C. A.

*re* Smith, (1892) 1 Ch. 738.

recover  
QUETTE  
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T. L. R.

drawn & payable  
in insolvency  
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to an action by an English subject on  
to be performed in England.

A., who had accepted a bill of e in  
gland for a debt contracted in  
Victoria, in Australia, where he  
of Insolvent Debtors Act for that colony,  
being afterwards sued in England for the  
of the bill & pleading such discharge;  
such discharge was no bar to the a  
c. HOBBS (1861), 1 B. & S. 375; 30 L. J. Q. B.  
352; 4 L. T. 445; 8 Jur. N. S. 52; 9 W. R. 603;  
121 E. R. 754.

Gardiner v. Broughton (1862), 2 B. & S.

L. T. 325;  
Metax (1890), 25 Q. B. D. 3

**2806. Bill drawn at Trieste on Liverpool Part  
payment in satisfaction by drawer Whether  
acceptor discharged in England.**—S., a  
at Trieste, the drawer of bills of ex  
merchants at Liverpool, paid the holder of  
the bills upon its becoming due a part of the  
of the bill, both parties being at that time  
but such payment was made & received in  
satisfaction of the bill, which payment, a  
the law of the country where the bill w  
to be in full satisfaction of a bill :

on the bill in 1 7  
18 (1851), 6 Exch. 17  
T. O. S. 127; 155 E. R.

**2807. Bill drawn in Pernambuco upon Liverpool  
—Composition by Pernambuco firm—Whether  
acceptor discharged in England—Proof in bank-**  
in partnership, as "D., Y. & Co." D. & Y. &  
also carried on business in Pernambuco in  
ship as "D., Y. & Co." The two firms

had any in  
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two h K.  
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firm  
firm entered with  
under of in  
of the in of the Pernatu-  
firm, as drawers of the . They  
to prove ag at the Ld  
firm as acceptors of the bills: Held: (1)

in England, were to be dealt with  
the rules of English law. —*Re DEANE &  
p. GOLDSMID* (1857), 1 D. G. & J. 257;  
L. J. Bey. 25; 28 L. T. O. S. 47; 2 Jur. N.  
1100; 4 W. R. 802; 44 E. R. 722, L. J. J.; a

## SECT. 8.—DISCHARGE.

### XIV., *ante*.

**2802. Bill accepted & discharged at ———  
Whether acceptor discharged in England.**—A man  
cannot be sued in England on his acceptance of a  
bill of exchange abroad, after he has been dis-  
charged by the laws of that country.

A bill of exchange was accepted at Leghorn, &  
was vacated by sentence of the ct. there: —*Held*:  
that discharged the acceptor from liability in  
England. —*BURROWS v. JEMINO* (1726), 2 Stra.  
733; Mos. 1; Cas. temp. King, 69; Dick. 48;  
2 Eq. Cas. Abr. 524, pl. 7; 93 E. R. 815, L. C.

*Annotations*: —*Consd.* *Boucher v. Lawson* (1732), 1 Cum. 144;  
*Reid, Ellis v. McHenry* (1871), L. R. 6 C. 1;  
*Da Costa v. Villa Real* (1730), 2

H. & N. 728

**2803. Bill drawn in America upon London—  
Drawer discharged in bankruptcy proceedings in  
America—Whether drawer discharged in England.**  
—Where debt. gave plff., in  
where both were resident, a bill  
by debt. upon a person in England, which bill was  
in England for

ge by the law of that S

bar to an a in

an implied *accomplice* to pay the amount of  
bill in consequence of such non-acceptance in  
England. —*POTTER v. BROWN* (1804), 5 East, 124;  
1 Smith, K. R. 351; 102 E. R. 1010.

*Phillip v. Kyre* (1870), L. R. 6 Q. B. 1;  
*Anderson* (1821), 5 Moore, C. P.  
*Forbes* (1817), Buck, 57; *Midway v.*  
(1820), 3 B. & C. 12; *Gard*  
B. & S. 743; *Ellis v. McHenry* (1871), L. R. 6 C. P.  
*Thurburn v. Steward* (1871), L. R. 3 P. C. 478.

**2804. Bill drawn in India—Insolvency of drawer  
in India—Liability of drawer.**—Deft., residing in  
India, drew bills of exchange on L. & Co., which  
were purchased in that country for & on account of  
L. M. S., residing in England, & the bills were  
by deft., & transmitted to plff. Deft.  
becoming insolvent, petitioned  
L. in India, & described the debt on  
of exchange in his  
"Creditor, A. M. S., for the following bills of  
exchange, describing them, drawn by us upon  
L. & Co. in favour of M. S." It appeared that a  
person of the name of A. M. S. resided at Calcutta,  
in India, but it was not shown that he was in any  
way connected with the bills. In an action by  
M. S. upon the bills  
of plff.'s debt in his was insufficient, &  
L. was liable on the r.

(1851), 6 Exch. 707; 20 L. J. Ex. 414; 155 E. R.

(1861), 26 L. J. Q. B.

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H. L. Cas. H. L. r.  
 Laine J. Q. Ex p. Berner &  
 B. Held. It. Johnson, Ex p.  
 (1888), 3 D. R. & J. 434.

**Of security—By payment of old by new bills in Holland.**—Where the drawee of bills of exchange, which had been dishonoured, accepted & paid other bills for the amount, taking an assignment of the mtge. upon which the original bills were secured: *Held*: as by the Dutch law, the satisfaction of the principal debt extinguished the mtge. or pledge on which it was secured, unless there was an express contract for keeping alive the original security, there being no contract or evidence to show that the intention of the to keep the mtge. alive, such acceptance & payment operated as an extinguishment of the principal security, & not as a transfer of the bills for which it was originally given. *WILKINSON v. S.* (1838), 2 Moo. P. C. C. 275; 12 E. R. P. C.

**2809. Right of set-off—Bill drawn in Demerara payable in England.** A. resident in Demerara, a bill of ex<sup>t</sup> in favour of B., also

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bkpt. When C's  
 due held two bills of  
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did  
 not proceed against C., but brought an action  
 in A. & B., the drawer &

C., who pl a right of set-off to the  
 of the two bills accepted by D., which the  
 d. & found for plffs.:

(1) the bill having been drawn in Demerara,  
 Dutch-Roman Law, in force in that colony,  
 ern the case, & by that law, the bill  
 by C. was compensated or  
 by the bills accepted by D.

ed to avail himself of that rule of law, in  
 t of a debt due to the principal debtor;  
 the and to  
 for to

C. 314; 13 Jur. 13 E. R. 704,

P. C.

Consid. Gibber 9 Exch. 2  
 R. S. 1 Ch. 235 *Held* c.

L. J. P. 1 C. L. R. 3 B.  
 77 R. Q. B.  
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1870, L. R. 3 A. & E.

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**PART XVIII. SECT**

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**SECT. 9.—PROOF OF FOREIGN LAW.**

*See, generally.* CONFLICT OF LAWS; EVIDENCE.

**2810. On whom onus.**—If a promissory note, made in he sued upon in England, & there is any difference between the law of the countries as to the liability of debt., it lies upon the latter to prove the difference.—*BROWN v. GRACEY* (1821), Dow. & Ry. N. P. 41, N. P.

r. Gilbert

13 L. T.

**2811.** ——. In *assumpsit* on a bill of exchange against acceptor, debt., pleaded that, after the accepting & after the time for payment, he, being resident in Scotland, & subject to the laws thereof, in consideration that certain supposed creditors should forbear to molest or sue him, made his deed or writing, duly stamped & attested according to the law of Scotland, by which he conveyed to D., & such persons as might thereafter be appointed trustees by the creditors, for the use of the creditors mentioned in the deed, & of other creditors whom the trustees should assume into the benefit of the disposition, all his movable estate in Scotland, in lieu & full satisfaction & discharge of all his debts owing to the creditors, that notice of the execution of the deed was given to divers supposed creditors in Scotland & England, including plff., that plff. by writing signed by him, & valid by the law of Scotland, appointed R. his attorney, to concur in & adopt the deed, & receive the dividends, that R. did adopt the deed & its provisions on plff.'s behalf, acted therein as plff.'s authorised agent, took part in the management of the estate, etc., that other creditors, in consideration of the assignment, & the acceptance thereof by plff., agreed to accept, & did accept, same, in full satisfaction of their debts, that funds of debt. had since become available under the deed for the benefit of the creditors, sufficient to pay the debts of debt., including that to plff.; & that all the proceedings were pursuant to the laws of Scotland, whereby, & by reason of the premises, & by the aforesaid laws, debt. had become absolutely discharged from the causes of action stated in the declaration:—*Held*: the pleadings must be understood to put in issue the law of Scotland, & debt., to succeed on the plea, was bound to prove such law as a fact.—*WOODHAM v. EDWARDS* (1836), 5 Ad. & El. 771; 2 Har. & W. 443; 1 Nev. & P. K. B. 207; 6 L. J. K. B. 38; 111 E. R. 1358.

*Annotation:* *Held*. *Benham v. Morington* (1846), 3 C. B. 133.

**2812. Method of—Foreign code.**—In our cts. foreign law is a matter of fact to be decided on the evidence of advocates practising in the cts. of the country whose law is to be ascertained, but if the witnesses in their evidence refer to any passages in the code of their country, as containing the law applicable to the case, the ct. is at liberty to look at those passages & consider what is their

*v. MURRIETA, DE MORA*



c. CONCHA (1889), 40 Ch. D. 343; T. 798,  
C. A.; varied, on another point, sub  
c. CONCHA, [1892] A. C. 670, H. L.  
Re De Nicola, De Nicola v. Curlier  
L. J. Ch. 419.

## 10. STATUTES OF LIMITATION.

OF ACTIONS. T OF LAWS; LIMITATION

2813. *Lex fori*—Note made in France.]—The French law of prescription with respect to promissory notes, appertains *ad tempus et modum*

& the payee of such notes may sue the resident in England, during six years time they become due.—HUNTER v. STEIN 2 Bing. N. C. 202; 1 Hodg. 200; 2 Scott, 304; 132 E. R. 80.

*Indemnities*: *Reid*, Bury v. Goldner (1841), 13 L. J. Q. B. 102; Phillips v. Eyre (1870), L. R. 6 Q. B. 1; Casati v. Meyer (1885), 1 T. L. R. 213. *Menda*, Don v. Lippmann (1837), 5 Cl. & Fin. 1; Clark v. Mullick (1840), 2 Moo. Ind. App. 265; Bucknaboye v. Lullashbury Mott (1861), 16 C. B. N. S. 373; Harris v. Quine (1869), L. R. 4 Q. B. 653. *Re Missouri SS. Co.* (1890), 37 W. R. 406; *Mid. Ry.* (1911), 80 L. J. K. B. 516.

2814. — Bill drawn & payable in France Payee suing in Scotch court, Where bills were & accepted, & became due in France, but

to Scotland, & there continued till : *Held*: more than six years having been the time of the bills becoming due being brought, the Scottish law of prescription, & its effect

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JANSEN (1837), 5 Cl. & Fin. 1; 2 Sh. A. 682; 7 L. T. 102; 7 E. R. 303, H. L.

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PART XVIII. SECT. 10.

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The Vernon (1847), 1 Wm.  
v. Whitehaven & Furness Ry. Co. (1850), 3 H. L. Cas. 1;  
L. 18. New. 175;  
4 H. L. Cas. 519; The Johannes  
& Ad. 83; The Zellverein  
L. T. O. S. 169; Cope v. Roberts (1858), 7 De G. & J. 614;  
L. R. 7. 440. In v. Prieto (1861), 10  
v. Hunter  
10 D. & W.

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A. C. 610;  
Symon, (1908) 1 K. B. 3

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Bill drawn in London on Italy.]—bankers in Milan, sued as the holders exchange, drawn on May 5 in firm in Italy.

by them in Milan, & by plffs. indorsed to a bank, by whom the bills were p

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& Co. (1885), 1 T. L. R. 213,  
245, C. A.

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in which: *Held*: where the holder of bills deration for same to

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ARNALDI & Co. v. MAYER & Co.  
1 T. L. R. 245, C. A.

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Nov. HAYMON v. GRAMAM  
(188), 2 T. 371.

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**SECT. 11.—OTHER CASES.**

**2817. Effect of decision in foreign court—Bill drawn in France payable in London—Acceptance cancelled by mistake.**—Deft., in discharge of a debt to ptf., indorsed bills to him, which had been drawn & indorsed to deft. by parties in France, but were accepted by a person in England, & payable at a banker's in England. Ptf. indorsed them over. On their being presented for payment, the banker's clerk inadvertently cancelled the acceptances, but immediately wrote opposite to them "cancelled by mistake," and the bills were not paid, there being no effects. The holders then presented them at a house to which they were addressed in case of need, but that house refused payment in consequence of the cancelling; they would otherwise have honoured them. A re-acceptance was obtained from the acceptor, but he did not pay the bills. Ptf. then took them up & returned them, regularly protested, to deft., who applied to the prior indorsers for payment, but they refused. Deft., who resided abroad, cited the drawers, the intermediate indorsers, & ptf., before the tribunal of commerce at Lyons, for the purpose of obtaining a guarantee for himself against liability on the bills. That ct. adjudged him & the other parties, except ptf., discharged from liability, & decreed that the bills should remain to ptf.'s debit. Ptf. then carried the cause to a ct. of appeal in France, which confirmed the decree, assigning as a reason that the cancelling of the acceptances operated as a suspension of legal remedies against the acceptor, & was equivalent to a delay granted him by the holders, with whom ptf. was identified, & that the other parties to the bills were discharged: *Held*: the French cts. had mistaken the law of England as to the effect of the cancellation, & deft. was still liable at ptf.'s suit for the debt in respect of which the bills were given, notwithstanding the decree. *NOVELLI v. Rossi* (1831), 2 H. & Ad. 757; 9 L. J. O. S. K. B. 307; 100 E. R. 1326.

*Annot. & Repl.* *Inflic v. Castrique* (1860), 8 C. B. N. S. 100. *Repl.* *Castrique v. Inflic* (1870), L. R. 4 H. L. 414. *Repl.* *Warwick v. Rogers* (1843), 5 Man. & G. 340; *Repl.* *Prince* (1857), 23 Beav. 145; *Baines v. Woodfall* (1806), 6 Jur. N. S. 19; *Simpson v. Fogo* (1863), 1 H. & M. 195; *Goddard v. Gray* (1870), L. R. 6 Q. B. 139. See also No. 2773, *ante*.

Discharge by cancellation generally, see Part XIV., Sect. 6, *ante*.

**2818. Right of indorsee to security for bill—Bill drawn in Buenos Aires accepted in Liverpool—Bills remitted to meet bills—Bankruptcy of acceptor.**—A firm at Buenos Aires drew five bills on a firm at Liverpool, who accepted them, & they were indorsed for value by the Buenos Aires firm to another firm there, the drawers agreeing, at the same time, to remit to the Liverpool firm to meet the bills when due, & their broker asserting that the drawing & the accepting firms were distinct.

Bills were remitted to the Liverpool firm to meet the five bills, & that firm became bkpt. on the petition of the partners. The firm to whom the bills were indorsed applied under the bkpcy. for a declaration that they were entitled to a specific lien on the bills remitted, but the petition was dismissed. After the dismissal, fresh evidence was discovered, but as the 21 days, allowed by Bkpcy. Law Consolidation Act, 1849 (c. 106), s. 12, had expired, the commr. refused to grant a re-hearing on account of delay:—*Held*: (1) although the 21 days had expired, the ct. was not precluded from hearing the case upon its merits on the whole evidence, considering the domicile of the parties; (2) the remitted bills were specifically applicable to cover the five bills; (3) the question involved the law of England only, & the fact of the Buenos Aires drawing firm & the Liverpool accepting firm being identical or not, was immaterial.—*Re LATHAM, Ex p. IMBERT* (1857), 1 De G. & J. 152; 26 L. J. Bey. 65; 29 L. T. O. S. 169; 3 Jur. N. S. 801; 5 W. R. 512; 44 E. R. 681, L. JJ.

*Annot. & Repl.* *Re Rawbone's Will* (2) (1857), 5 W. R. 796; *Thayer v. Lister* (1861), 30 L. J. Ch. 427; *Thomson v. Simpson* (1870), L. R. 9 Eq. 497; *Re Scheffler, Ex p. Cooper* (1874), 31 L. T. 417; *Re Cohn, Ex p. Cohn* (1878), 38 L. T. 581.

**2819. Agreement to accept bill—Bill drawn in America payable in England—Judgment for holder in America—Enforcement of judgment in England.**

—Defts., who were partners carrying on business at Liverpool, gave, while in New York, to F. & A., a letter of credit as follows: "In reply to your communication made to me this morning respecting your drawing exchanges upon us, I would state that you have our authority to do so, & all such exchanges drawn upon us will be duly honoured & protected." The letter was deposited, by F. & A. with S. & Co., bankers in New York, & bills of exchange were drawn on defts., payable to the order of the drawers, F. & A., in London, & one of the bills was sold by S. & Co. to ptf's. The amount of the bills respectively was paid to F. & A., by ptf's, or by S. & Co., & the bills were presented for acceptance to defts. at Liverpool, but they refused to accept them. Proceedings were instituted in the Supreme Ct. of New York against defts., & the actions, & all the issues therein, were referred to an arbitrator, who reported that there was a contract by defts. that the bills should be accepted by them, & that the contract was to be governed by the laws of the State of New York, & that ptf's. were entitled to judgment for the amount of the bills, with interest & costs. Upon that report, the Supreme Ct. adjudged that ptf's. should recover the amount. In actions brought on the judgments, by ptf's. & by S. & Co.:—*Held*: the *lex loci* of the contract must prevail, & the ct. in New York having decided in favour of ptf's., & of S. & Co., judgment must be given for them. *Semble*: by the law of England no action would be maintainable because there was no privity

**PART XVIII. SECT. 11.**

**4. Right of holder to sue on original consideration.**—A note made in Albany, U.S., may be declared on under the common counts, under the Stat. of Anne. *KING v. TANNHILL* (1837), Tay. 418.—**CAN.**

1. Where according to the *lex loci contractus* a promissory note or bond cannot, in the absence of registration, be a source of legal right, no action on an unregistered note or

bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure to be governed by the *lex loci*.—*PALANCAFFA v. MERTLE PERIAKARUPPAN CHETTI* (1894), 1 L. R. 17 Mad. 763.—**IND.**

2. Admissibility of evidence.—*Lex loci solutionis*.—In prom. bill delivered for discount only.—In an action by English bankers, indorsers of a bill accepted in Scotland, payable in

London, which had been protested for non payment, defender alleged that the bill was left at the banking house for discounting only, but had been retained by them for the general balance due to them:—*Held*: the allegation might be proved by parol testimony according to the law of England, if by that law such proof would be admissible in a similar case.—*GLYN v. JOHNSON* (1839), 26 Pac. Coll. 729; 5 Sh. (Cl. of Com.) 339.—**SCOT.**



of contract.—**SCOTT v. PILKINGTON** (1862), 2 B. & S. 11; 6 L. T. 21; 8 Jur. N. S. 537; 121 E. R. 978; *sub nom.* **MUNROE v. PILKINGTON**, **SCOTT v. PILKINGTON**, 31 L. J. Q. B. 81.

*Annotations*.—**Edw.** Godard v. Gray (1870), L. R. 6 Q. B. 139. **Mond.** Gardiner v. Houghton (1867), 3 D. & S. 743; *Re Agre & Masterman's Bank, Ex p. Asiatic Banking Corp.* (1867), 2 Ch. App. 291; *Kills v. M'Henry* (1871), L. R. 6 C. P. 778; *Re Henderson, Nourion v. Freeman* (1887), 33 Ch. D. 704.

Agreements to accept generally, see Part VI., Sect. 7, *ante*.

Liability of drawer who does not accept generally, see Part XIII., Sect. 7, *ante*.

## SECT. 12.—STAMP DUTIES.

See 1882 Act, s. 72 (1) (a).

See, generally, Part XXV., *post*.

**2820. Bill drawn in England—Accepted in Brussels—Payable in England.**—A bill of exchange drawn in London, payable to the order of the drawer in London, upon a merchant residing at Brussels, & accepted by him, payable in London, is an inland bill of exchange, & must be stamped as such. — **AMNER v. CLARK** (1835), 2 Cr. M. & R. 408; 1 Gale, 101; 5 Tyr. 942; 4 L. J. Ex. 254; 150 E. R. 202.

**2821. Note made in England Sent unstamped to Canada—Stamp Act, 1891 (c. 39), s. 34.**—A promissory note was made in England payable to the order of a co., & sent unstamped to the co. in Canada: *Held*: by the above sect., the note ought to have been stamped in England by the maker before he parted with it, & it could not be sued upon. — **BANK OF MONTREAL v. EXHIBIT & TRADING CO., LTD.** (1900), 22 T. L. R. 722; 11 Com. Cas. 250.

**2822. Bill drawn in Ireland—Negotiated in England.**—Where partners resident in Ireland signed & indorsed a copper-plate impression of a bill of exchange, leaving blanks for the date, sum, time when payable, & name of the drawee, & transmitted it to B. in England, for his use, who filled up the blanks & negotiated it:—*Held*: this was to be considered a bill of exchange by relation, from the time of the signing & indorsing in Ireland, & an English stamp was not necessary. — **SMITH v. MINGAY** (1813), 1 M. & S. 87; 105 E. R. 33.

*Annotations*.—**Fold.** Holdsworth v. Hunter (1820), 10 B. & C. 449; *Harker v. Sterne* (1834), 9 Exch. 884. **Edw.** Boehm v. Campbell (1819), 3 Moore, C. P. 15; *Griffin v. Weatherby* (1868), 9 B. & S. 726. **Mond.** Abraham v. Skinner (1840), 12 Ad. & El. 363; *Re Hayward, Ex p. Hayward* (1871), 6 Ch. App. 546.

## PART XVIII. SECT. 12.

**h. Time for stamping.**—Holders of foreign bills are, under Stamp Duties Act, 1846, s. 25, required to affix adhesive stamps before presentation for payment. — **BANK OF ACHRA-LAND v. RAIT** (1863), 1 C. A. 94. — **N.Z.**

**1. Bill drawn in Paraguay—Discount by non-acceptance in Scotland.**—A bill was drawn by a domiciled Scotsman in Paraguay upon a drawee in Scotland who did not accept, in favour of a Frenchman residing in Paris:—*Held*: the ct. would not entertain an objection that by the law of

Paraguay the bill was null, in respect that it was not stamped. — **STEWART v. GILBERT** (1871), 9 Moiph. (Ct. of Sess.) 1857. — **SCOT.**

**2823. Note made abroad—Ineffectively stamped & void—Recovery in New South Wales.**—*Held*: an instrument could not be dealt as valid in New South Wales, which in the country in which it was made was inoperative & void. — **GILBERT v. DAVISON** (1849), 1 Legge, 329. — **AUS.**

**2. Note made in Indian Native State—Ineffectively stamped—Right to sue on original consideration.**—A suit

**2823. Bill drawn in Isle of Man—Not negotiated in United Kingdom.**—In an action for money had & received, the following evidence was given. J. was indebted to ptf., & was also a creditor of the S. & F. Co., Ltd., which was being wound up, & deft. was the official liquidator. J. signed the following document: "Isle of Man, July 15, 1865. On Aug. 1 next, please to pay to ptf., or order £800, on account of moneys advanced by me to the S. & F. Co., Ltd. To deft., official liquidator of the co." The document, which was unstamped when produced at the trial, was sent by J. to ptf. in England, & they forwarded a copy to deft., who was also in England, requesting to know whether he would honour the order, & he replied he would when funds came into his hands about Aug. 15. Funds did come into his hands soon after that time, but owing to a dispute as to the amount remaining due to J. nothing was then paid, & after much correspondence, in which ptf. continually demanded payment of the order, but never parted with it, an action was brought:—*Held*: as the order was drawn in the Isle of Man, it was a foreign bill for stamp purposes, & need not be stamped except as required by Stamp Act, 1854 (c. 83), ss. 3 & 5, viz., when "presented for payment, indorsed, transferred, or otherwise negotiated in the United Kingdom," & as it had not been dealt with in any of those ways, was admissible in evidence without a stamp. — **GRIFFIN v. WEATHERBY** (1868), L. R. 3 Q. B. 753; 9 B. & S. 720; 37 L. J. Q. B. 280; 18 L. T. 881; 17 W. R. 8.

*Annotations*.—**Mond.** Greenway v. Atkinson (1881), 79 W. R. 360.

**2824. Note made abroad—Unstamped & void—Recovery in English court.**—*Held*: ptf. could not recover upon a non-negotiable promissory note made in Jamaica, which by the laws of that island was void for want of a stamp.

This is a promissory note, though not negotiable, & as it is not stamped, it cannot be received in evidence. Then it is said that we cannot take notice of the revenue laws of a foreign country, but I think we must resort to the laws of the country in which the note was made, & unless it be good there, it is not obligatory in a ct. of law here. — **ALVES v. HOBSON** (1797), 7 Term Rep. 241; 101 E. R. 953.

*Annotations*.—**Comd.** Bristol v. Sequeville (1850), 5 Exch. 275.

**2825. Bill drawn abroad—Stamped abroad.**—If a bill made payable to the order of blank be drawn in Jamaica on a stamp of that island only, an English stamp is not necessary to the validity of the insertion of the bearer's name in England. — **CRITCHLY v. MANN** (1814), 5 Taunt. 529; 1 Marsh. 20; 128 E. R. 700.

*Annotations*.—**Mond.** Marshall v. Taylor (1865), 6 New Rep.

having been brought in a ct. in British India, on a note executed in Hyderabad State, & stamped with a British India stamp, it was contended that the note not having been stamped with the stamp required by the laws of the Hyderabad State, no suit would lie upon it in the British Indian Ct. — *Held*: though the promissory note was inadmissible in evidence under Hyderabad State Stamp Act, that law did not declare the agreement void & the agreement could, therefore, be sued upon & enforced in a ct. in British India. — **IND.**

XIX. 1 & 2.]

Harvey v. (1867) 1 B.

L. T.

v.

**Body of bill written in**  
the body of a bill is written, & the  
ance of it made in England, yet if it be afterwards  
transmitted to the drawer abroad for his signature,  
& it is there drawn the bill is a foreign bill, &  
not require an English stamp. *HOKIN v.*  
(1818), Gow, 55; subsequent proceedings  
Mason C. P. 15.

**2827. — Bill in sets.**—A bill drawn in sets out  
of Great Britain, payable after sight, was, for a  
fraudulent purpose, by the drawer, accepted in all  
the parts, & at different days of sight: *Held*:  
to require an English stamp. *HOLMESWORTH*  
*HUNTER* (1830), 10 B. & C. 440; L. & Welsh.  
5 Man. & Ry. K. B. 303; 8 L. J. O. S. K. B.  
100 E. R. 517.

*Edward v. Klockmann* (1863), 3 B. & S.

**Altered amount.**—A declaration in  
alleged that plff., in France, drew a bill,  
for a sum named, on deft., which deft. acc-  
Issue was joined on a traverse of a plea  
that plff., after the acceptance, & without deft.'s  
changed the purport of the bill by altering  
for which it was drawn. On the trial it  
that the bill had been originally drawn in  
for a larger sum than that named, but  
it had accepted for a smaller sum. In the  
the bill the sum originally named had  
to that for which deft. had accepted, but  
it did not appear by whom, or at what time or  
the alteration had been made. No stamp  
the bill: *Held*: plff. was entitled to a  
it not being shown that

it made by the parties contrary to

in England, so as to

*HANKIN v. BRUCK*

D. Q. B. 300; 15 L. J. Q. B. 343; 10 Jur.  
1094; 115 E. R. 1290; sub nom. *ANKLET v.*  
*BRUCK*, 7 L. T. O. S. 21

**Blanks filled up in England.**—A., in  
as drawer, a blank form of a bill of  
it with a consignment of goods to  
in London, for acceptance by

of the  
by  
got the bill  
date, amount,  
by deft., a)

his own purposes, when it

to plff.: *Held*: the bill was not an  
& did not require a stamp. *BARKER v.*

*Exch.* 681; 23 L. J. Ex. 201;

T. O. S. 95; 2 W. R. 418; 2 C. L. R. 1020;  
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**2830. — Bill not negotiated in United King-**

—A foreign bill of exchange was drawn  
by a person residing abroad, addressed to a  
in England, for acceptance, indorsed by  
the payee, who lived abroad, to another branch of  
his house in England. Acceptance was refused.

bill had no stamp upon it. In an action by  
against drawer:—*Held*: a stamp was

under Stamp Act, 1854 (c. 83), as it  
was a bill of exchange drawn out of the United  
Kingdom, & not paid indorsed, transferred or  
otherwise negotiated within the United Kingdom.

—*SHARPLES v. RICKARD* (1857), 2 H. & N. 57;  
26 L. J. Ex. 302; 29 L. T. O. S. 201; 5 W. R. 508;  
157 E. R. 24.

*Annotation* *Fold. Griffin v. Weatherby* (1868), L. R. 3 Q. B.  
155.

**2831. — Stamp defaced without date—Ad-**  
**missibility in evidence.**—A foreign bill, bearing a

stamp, defaced by the person who affixed it, prior  
to the indorsement to plff., but the defacement  
having no date:—*Held*: inadmissible in evidence,  
&, on the common traverses, plff. not entitled to  
recover upon it. *GILMORE v. WHITMARSH* (1860),  
2 F. & F. 295, N. P.

**2832. — Stamp not cancelled—Onus of proof**  
**as to time of stamping.**—Although not cancelled, if

the holder of a foreign bill proves that the proper  
up was affixed before the bill came into his  
the burden of proof that it was not duly  
thrown upon the person objecting to its

*Seem*: such an objection can be  
raised only by plea. *MARC v. ROUY* (1874), 31  
L. T. 372; 23 W. R. 89.

**2833. — Duty of holder & transferee to**  
**cancel.**—The duty of cancelling the stamp affixed  
to a foreign bill of exchange is equally imposed both  
on the holder & the transferee of such a bill, by  
Stamp Act, 1854 (c. 83), s. 5.

Where deft. sold to plff. a number of foreign bills  
of exchange, of which the stamps were not can-  
celled, both parties being ignorant of the deficiency  
at the time of the transfer:—*Held*: (1) on dis-  
covering the mistake plff. could not recover from  
deflt. the price paid for the bills as upon a failure of  
consideration, both parties being equally in fault;  
(2) as the claim to have the money returned was not  
made till more than a year after the sale of the bills  
took place, even had the action lain, plff. had lost  
right to maintain it, by reason of the delay.

: if the bills had been returned to deflt., he  
as holder, have sued the acceptors, though  
he might have been unable to transfer the bills so  
as to have made them available in the hands of  
another person. *POOLEY v. BROWN* (1862), 11  
C. B. N. S. 566; 31 L. J. C. P. 134; 5 L. T. 750;  
8 Jur. N. S. 938; 10 W. R. 345; 142 E. R. 917.

**2834. — Whether adhesive stamp sufficient.**—

A bill drawn in France on the Bank of England:—

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*Held*: properly stamped by the holder to it & cancelling a penny adhesive stamp.—*Re* *BOYNE, (CROFTON v. CROFTON, CANONGE'S CLAIM (1886), 33 Ch. D. 612; 50 L. J. Ch. 135; 55 L. T. ; 35 W. R. 247; 2 T. L. R. 879.*

**Bill** purporting to be drawn  
of evidence to show bill drawn in

Where the admissibility of a bill of exchange, purporting to be a foreign bill, & stamped accordingly, was objected to, on the ground that, though it purported to be drawn abroad, it was in fact an inland bill, drawn in London, & evidence was offered to prove that fact:—*Held*: the court ought to have received the evidence in that of the cause, & decided upon the \_\_\_\_\_

The instrument, & not to have received afterwards, as part of deft.'s case, & it to the jury. -BARTLETT v. SMITH

, 11 M. & W. 463; 12 L. J. Ex. 287; 1  
T. O. N. 149; 7 Jur. 448; 152 E. R. 805.

11 Exch 960; Harris v. O. W. Ry. Co. (1874), 1 Q. B.

2834. - stamp

Qu. : (1)  
for a bill drawn, in  
but purporting to  
the initials name date

L. 17 C. H. 251; 25 L. J. C. P. 2;  
L. T. O. S. 210; 4 W. R. 153; 150 E. R.

Tatterhall v. Kearney  
R. 368; Sharples v. Richard (1851), 20 L.  
v. Groot (1854), 20 L. J. 20; Ruffy v.  
67), L. R. 2 Q. B. 488; Hewitt v. Tilton,  
R.

## Part XIX.—Cheques.

## 1. IN GENERAL

<b>What is a cheque— Form of</b>	<b>1882</b>
<b>Act, s. 73; Part II., Sect. 1, &amp;</b>	
<b>Presentment for payment.</b>	<b>2 Act, s. 74;</b>
<b>XII., Sect. 2.</b>	

**Revocation of banker's authority.**  
 Cf. §. 75; BANKERS & BANKING, Vol. III.,

**Conditional delivery.**—See Part VIII.

## 2. CROSSED CHEQUES.

2 Art. 70

Obliteration or alteration of crossing.)  
and BANKING, Vol. III., pp. 230, 241.

2837. Effect of crossing—On negotiability of cheque. —The crossing of a cheque payable to bearer with the name of a banker does not restrict its negotiability to such banker alone. Such far a protection to the owner of the the banker, upon whom the cheque is drawn, ought not to pay it if he does so & the it turns out the circumstances of

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21 L. J. Ex. 70      L. T. O. N. 277; 10 Jur  
135 E. R.      dofta.  
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Page 10

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## DISCUSSION

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Sect. 2. — (*Crossed cheques.*)

**2338.** — The crossing of a cheque with the words " & co." or with the name of a banker does not affect the negotiability of the cheque, & an individual who receives the cheque *bona fide* & gives value for it, is entitled to retain the amount of it through his bankers from the bankers on whom it was drawn.

In an action for the conversion of a crossed cheque, an individual, who had cashed it for a clerk of plff., the payee of the cheque, the clerk being intrusted with it to hand to the bankers of plff.: — *Held*: the proper question for the jury was, whether deft. took the cheque *bona fide* & for value. — *CARLON v. IRELAND* (1856), 5 E. & B. 765; 25 L. J. Q. B. 113; 26 L. T. O. S. 195; 2 Jur. N. S. 39; 119 E. R. 606; *sub nom.* *CORLAN v. IRELAND*, 4 W. R. 200.

*dictum*: *Consd.* *Smith v. Union Bank of London* (1875), 1 L. J. Q. B. 119.

*Held*: (1) 10 & 20 Vict. c. 16, s. 12, applied to the cheque, & (2) the crossing of the cheque was not binding on the defendant.

to H. It did not the crossing, formed no part of the cheque. — *TAYLOR* (1858), 4 L. J. Q. B. 113; 4 Jur. N. S. 39; 119 E. R. 606; *Ex. Ch.*

*Consd.*

to order, "crossed it" & his indorsement. — *H.* who took it to his country & the L. & J. bank, it from M. & Co. — *H.* & their London & received payment for did not perceive or "L. & C. bank." On

him a second cheque the amount, M. &

with both cheques. — *Plff.*

action for the amount of the first had

jury that all the the of negligence with regard to the payment of

by M. & Co. improperly & authority, and paid it to the

plff. could maintain this action against deft., who had no title to the cheque. — *ROBERTS v.*

*W.*, 1 Ex. D. 308; 45 L. J. Q. B.

T. 851; 24 W. R. 711.

*v. Fox* (1884), 11 Q. B. 414.

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a banker, who in good without negligence in due course of collection received payment for a customer of a cheque crossed generally, but having a forged indorsement, was protected by Crossed Cheques Act, 1878 (c. 81), s. 12, from liability to the true owner of the cheque for having placed the amount of such payment to the credit of his customer, notwithstanding such cheque had not the words "not negotiable" upon it. — *MATTHIJSSEN v. LONDON COUNTY BANK* (1879), 5 C. P. D. 7; 48 L. J. Q. 41 L. T. 35; 43 J. P. 560; 27 W. R. 177.

*G. W. Ry. v. London & County Banking Co.*, [1901] A. C. 414; *Gordon v. London City & Midland Bank*, *Gordon v. Capital & Counties Bank*, [1902] 1 K. B.

**2342.** — H. having by false obtained from applts. a cheque crossed " & marked "not negotiable," took it to at his request paid part of the amount of the cheque into the account of one of their customers & handed the balance to H. After resp. had received payment of the cheque from the bank on which it was drawn, H.'s fraud was discovered, applts. sued resp. for the amount. It was found a fact that resp. received the payment in good faith & without negligence. They had for years been in the habit of cashing cheques for H. in a similar manner. He had no account or pass-book with them: — *Held*: H. was not a "customer" of resp., & they did not receive payment of the cheque for him, within 1882 Act, s. 82, & were not protected by that sect., & H. having no title to the money, resp. took no title to it or to the money, & were liable to applts. for the amount of the cheque. — *GREAT WESTERN RY. v. LONDON & COUNTY BANK*, [1901] A. C. 414; 70 L. J. K. B. 915; 4 L. T. 50 W. R. 50; 17 T. L. R. 7; 41 Jo. H. L.

11 K. B.

*Crumplin v. London Joint Stock Bank* (1913), 109 L. T. 856; *Morton v. London County & W.* (1914) 3 K. B. 356; *Taxation Comrs. v. & Australian Bank*, [1920] A. C. 683.

**2343. Effect of "not negotiable."**

into partnership with S., a builder, who on business as S. & Co., in respect of a made by S. with a school board. The of partnership contained the following: "You shall not be liable to contribute any of the necessary working capital, same to be provided by me, & all money receivable by me only. The receipts signed by me, S. & Co., to be only valid." A payment of £140 10s. 4d. having to be made by the board under the contract, S. received a cheque from the board for the amount. The the Bank of

plff. & not payment of A. could not to sue than had himself LTD. (1914) R. 183.—AUB



payable to S. & Co. or order, & was crossed, the words "not negotiable" being added. S., who had no banking account, in fraud of plff. took the cheque to deft. & asked him to get it cashed for him. Deft., who had no knowledge of the fraud, or that plff. was a partner with S., paid the cheque into his bankers & when it was honoured he paid the amount thereof to S. S. was subsequently convicted of stealing the cheque as a partner, & plff. brought an action to recover the amount of the cheque from deft. :—*Held*: as the cheque was crossed "not negotiable," by S. S. deft. could get no better title than that of the person from whom he received it, & as S., by agreement, had no right to the cheque, as against plff., deft. had no right as to it. *Fisher v. Roberts* (1880), 3 T. L. R. 131; 11 C.A.

W. Ry. v. London & Co.  
114

Ry. C.  
No. 2812.

**2846. Effect of "account payee".**—On negoti-  
of cheque. —Deft. drew a cheque, payable to  
the order of M., for £150, & crossed it "account of  
M., N. bank," & gave it to M., who indorsed it to  
the N. bank, plffs. :—*Held*: plffs. were entitled to  
it, for it

it  
not under 1882 Act, s. 8, but,  
that it, the intention to prohibit

(2) a cheque payable to order or to bearer could  
be not negotiable except by crossing it in  
provided by s. 76. :—*NATIONAL BANK v.*  
1891, 1 Q. B. 435; 60 L. J. Q. B. 109; 63  
L. T. 787; 30 W. R. 301; 7 T. L. R. 156, C. A.

L. T.

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**2847. — Not addition to crossing.**—An  
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from plffs. some cheque  
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2 K. B. 465; 73 L. J. K. B. 742; 91 L. T. 175;  
52 W. R. 670; 20 T. L. R. 364; 48 Sol. Jo. 5  
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& Counties Bank (1908), 33 T. L. R.  
Mayo, [1910] 1 K. B. 346.

**On duty of banker.**—It may  
on the part of a banker to receive pay  
for a customer of a crossed cheque  
"account of payee," where the banker has  
tion which may lead him to think that the  
which he is paying the amount of the c

is  
HANK, LTD., BRYAN v. & HANK.  
3 T. L. R.

[1914] 1 K. B. 336,  
& Parry Has

T. L. R. 195.

**2849. — To make inquiries**  
account with cheque so crossed. :—A  
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any inquiries. :—*LADBROKE & Co.*  
111 L. T. 43; 30 T. L. R. 433; 19

Cheque

anted by bearer. :—A cheque di in favour of  
"E. S. H. & others or bearer," with the  
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L. J. K. B. 1840; 113 L. T. 817; 31 T. L. R. 470.

**2851. On liability of banker. Acting in**  
**good faith & without negligence.** In the case of a  
cheque signed "per pro" issued without authority,  
but duly honoured by the bank upon which it  
drawn, 1882 Act, s. 25, not operate to

s. Neither is that affected  
"or

K. B. 350; 83 L. J. K. B. 1202; 111 L. T. 114;  
30 T. L. R. 461; 58 Sol. Jo. 453;  
273, C. A.

*Annotations*  
[1913], 109 L. T.

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# INSTRUMENTS.

; BANKERS & BANKING, Vol. III.,

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to collecting banker.]—See BANKERS

to a holder

Vol. III., p.

wife was also a holder.—*DEY v. MAY* [1920] K. B. 346; 89 L. J. K. B. 241; 122 L. 742; T. L. R. 217; 64 Sol. Jo. 240, C.

X., Sect. 5 & Sect. 6, ante, & WAGNER.

warrants.]—See Part XX., Sect. 2,

3.—POST-DATED

Part IV., Sect. 2, ante.

## Part XX. — Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

### 1. — HOW NEGOTIABILITY ESTABLISHED.

i. Custom of merchants.—Custom of merchants concerning bills of exchange is part of the common law. *WILLIAMS v.*

to the general law.—*CROUCH v. CREDIT FONC OF ENGLAND* (1873), L. R. 8 Q. B. 374; 42 L. J. Q. B. 183; 20 L. T. 259; 21 W. R. 946.

*Annotations*:—*Conrad*, *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337; *London & County Banking Co. v. London & Ch. 327*; *Bechuanaland Exploration Co. Trading Bank*, [1898] 2 Q. B. 658. *Dirtd.* *r. Alexandria Water Co.* (1905), 21 T. L. R. 372. *Reid*, *Goodwin v. Roberts* (1876), 1 App. Cas. 476; *Mortgage Insee. Corp. v. L. R. Comrs.* (1888), 21 Q. B. D. 332; *Simmons v. London Joint Stock Bank* (1890), 39 W. R. 449; *Dashwood v. Magniac*, [1891] 3 Ch. 306; *r. Coventry*, [1909] 2 K. B. 1029. *Mentd.* *Two Dreyfus* (1877), 5 Ch. D. 605; *National Bank v.* 13 L. T. 787.

of usage. Custom of recent origin.—In May, 1809, defts., a limited co. regis- c Act, 1802 (c. 80), sold to M. a under the seal of the co. & signed by two directors & the secretary. It was & headed with the name of the co., &

2855. — — — — — W

to treat as negotiable the debentures of an English co. has been proved, the ct. will give effect to such usage, notwithstanding that it may be of recent origin only. *BECHUANALAND EXPLORATION CO. v. LONDON TRADING BANK LTD.*, [1898] 2 Q. B. 658; 67 L. J. Q. B. 988; 79 L. T. 270; 14 T. L. R. 587; 3 Com. Cas. 285.

*Annotations*:—*Apprvd.* *Edelstein v. Schuler*, [1902] 2 K. B. 144. *Fold.* *Webb, Hale v. Alexandria Water Co.* (1905), 21 T. L. R. 372. *Reid*, *Clayton v. Le Roy*, [1911] 2 K. B.

2856. — Custom of stock markets of Europe — Followed by English law.]—*GOODWIN v. ROBERTS*

2857. — Negotiability by foreign law not sufficient.—Negotiability by English statute law or by custom of English merchants necessary.]—An instrument, though negotiable by the law of a foreign country, is not negotiable by the law of England so as to give a *bona fide* holder of the instrument for value a good title as against the true

by English law or by the custom of English

XX. SECT.

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## LONDON &amp; COUNTY BANK

*Annotations.*—*Reid*, Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia (1834), 23 Ch. D. 362; Venables v. Baring, (1892) 3 Ch. 329; Bushmansland Exploration Co. v. London Trading Bank, (1889) 3 Q. B. 658.

2873-2874, 2880, 2883, 2886,  
Act, 1873 (c. 66), s. 25 (6).

ESTOPPEL.

money, as cash,  
of business, by  
consent of mankind, which gives them the  
& currency of money, to all intents & pur-  
J.).—MILLER v. HACE  
1. 452; 2 Keny. 169; 97 K. R. 308.

## 2.—WHAT INSTRUMENTS ARE NEGOTIABLE.

## SUB-SECT. 1.—EXCHEQUER AND TREASURY BILLS.

**2858. Transferable by delivery.**—Where a person, who is in reality the agent of bills with his own bankers, informing them whose property these bills are, the bankers may be held entitled to bills as the depositor's property, & to hold them as security for any money due to them from him, if the mode of deposit, or the circumstances attending it, give them a lien on the bills as against him.

Exchequer bills are negotiable securities passing by delivery (LORD CAMPBELL).—BRANDAO v. BARNETT (1846), 12 Cl. & Fin. 787; 3 C. B. 519; 8 L. R. 1022, H. L.

*Reid*, Goodwin v. Roberts (1873), L. R. 10  
1, 357. *Mond*, Cooper v. Shepherd (1846), L. T. 118.

Brethart (1847), 6

H. L. C. 28.

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(1874)

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2 Q. B. 111; Banque de Paris  
(1870), 37 T. L. R. 76. *Mond*  
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e Smyth

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T. 153

2 Q. B. 108; 3

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or

from

at

L. RAPHAEL v. BANK OF  
17 C. B. 161; 25 L. J. C. P. 33;  
4 W. R.

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**19. Blank not** An  
bill, the in which was not filled up,  
of selling it the hands of A., he,  
him to the amount of its value. A.  
bkpt. :-

bill, like bank notes & bills of  
in blank, passing by delivery.—  
v. POLE (1820), 4 B. & Ald. 1; 106 E. R.

(182)  
& C.

H. 1  
784

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## PART XX. SECT. 2. SUB-SECT. 2.

2860

111.

England

chief to

&

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1, 10 T. R. 20; 8 A. 17.

116

16

**instrumen**

3441

the payer, nor need the name of the remitter be given, provided the name of the banker was written on the face of the order. India.

of the orders from the

the clerk with the proceeds: -Held: (1)  
was conversion of the orders by



was not to render post office orders instruments transferable by delivery amongst persons having bankers' accounts; (2) pltfs. were not, by having entrusted the orders to the clerk, estopped from asserting their own title to them, &

to recover from debts, the proceeds of the  
as money received to plffs' use. FINE ART  
SOCIETY v. UNION BANK OF LONDON (1886), 17  
Q. B. D. 705; 50 L. J. Q. B. 70; 55 L. T. 536;  
51 J. P. 69; 35 W. R. 114; 2 T. L. R. 883, C. A.

Haynes v. London & South Western  
T 654. **Meals.** McIntire v. Potter

Lyonsville,  
and  
H.

11

743

## APPENDIX.

**East India bond-- Whether right of action on**

hands with the

who afterwards privily & without deft's authority sold his bonds, & upon his demand of delivered up to him the Indian bonds of to the same total amount, & payable to the

\* the treasurer of the  
de in blank before they

but having different numbers & for different separate sums, & manifestly distinguishable from his own bonds, though deft. did not know that they were the property of another, but was told by the bankers that they had exchanged his original bonds for these: -

*Held*: deflt. having sold plffs.' bonds so received from his own agents, who had acted *mala fide* in them to him, was liable to answer over to the amount, in an action of *assumpsit* for had & received to their use.

to the case of  
in fact a

to ordnance debentures, notes, bills, &

of the same description, which  
daily in the money market, the fact of  
such negotiability should be stated. But

it were so stated, how could a right of  
to pass by such  
to a holder of them, where by law no such right

to the legal negotiability of such instru-  
which distinguishes them from bills of  
of that nature in which the  
under the law merchant, by  
& delivery to another (LOUIS ELLIEN-

104 K. H. JON.

100

**Exch.**

3, c. 64, by which bonds of      East India Co.  
 in      C.J.J.  
 c. Bank of      9 Q. B.

**Bald.**

1. Colonial bond to bearer—Containing charge on property of colony.—A colonial bond to bearer, though containing a charge on property in colony, if negotiable by the law of such colony, is in the country where such bond

(1964), 92 L. T. 87.

Mont. Winthrop, Ill.

1 K. B. 1022.

**2865. Foreign bond to bearer—Transferable by delivery.]**—Where a foreign prince gave bonds, whereby he declared himself & his successors bound to every person, who should for the time being be the holders of the bonds for the payment of the principal & interest in a certain manner:—*Held*: the property in those instruments passed by delivery as the property in bank notes, Exchequer bills, or bills of exchange, payable to bearer, & an agent, in whose hands such a bond was placed for a special purpose, might confer a good title by pledging it to a person, who did not know that the party pledging was not the real owner. —*GORDIER v. MIEVILLE* (1824), 3 B. & C. 45; 4 Dow. & Ry. K. B. 641; 2 L. J. O. & K. B. 208; 107 E. R. 651.

*Annotations:* **Consd.** Lang v. Smyth (1831), 7 Bing. 284;  
Ch. v. Credit Foncier of England (1873), L. R. 8 Q. B.

*r. London & County Co.* (1887), 36 L. J. Q. B.  
on *Co. v. Lond*

Bank, 1898. B. 638; Webb, Hale &  
Water Co. 21 T. L. R. 572. **Reid**, Goodwin &  
Roberts (1875), L. R. 10 Exch. 337; London & Country  
Banking Co. & London River Plate Bank (1887), 20  
Q. B. D. 432; London Joint Stock Bank & Simmons,  
A. C. 201.

**2866.** ———.—Probate duty is payable in  
of bonds of foreign govts., of which testator,  
dying in England, was the holder at the time of  
his death, & which have come to the hands of his  
in England, such bonds being marketable  
within the kingdom, saleable & trans-  
by delivery only, & it not being necessary  
to do any act out of the kingdom in order to render  
the transfer of them valid.—A.-G. v. **BOUWENS**  
(1838), 4 M. & W. 171; 1 Horn & H. 319; 7  
L. J. Ex. 297; 150 E. R.

**Refd. Crouch v. Poncher of England (1873), L. R. 8 Q. B. 374; Goodwin v. Roberts (1873), L. R. 10 Exch. 337; A.-G. v. Sudeley, 1 Q. B. 354; Stern v. R. Fund Life**

L. R.  
I Q. B. 175; A.  
I Q. B. I.  
84 L. T. 7

r. A.-G.  
. Pratt  
r. I. R.  
r. New York Breweries Co.,  
Comrs. r. Muller's

**for not**

alleged that pltf.

with debt. to buy, & then bought from him, & debt. then agreed to sell, & then sold to plff., certain foreign stock, to wit, 28,000 Spanish Active Stock, etc." :—*Held*: a contract for the sale of stock, Exchequer bills, & securities of that description, in which the property passed by delivery, differed from a contract for the sale inasmuch as a contract of stock, Exchequer bills, etc., would by the delivery of any stock or bills of bargained for.—*HESLTINGE* v.



865.

337.

*v. Roberts* (1875), L. R. 10

whom

of stock in a foreign railway, of which he executed transfers in blank, & bonds of foreign cos., for the purpose of raising a loan. Some of the foreign bonds were made payable to bearer, & in others the name of the obligee was left blank, the bonds being transferable, after the name had been filled in, by entry in the co.'s books. There was evidence that both the classes of bonds were treated in the city of London as negotiable securities transferable by delivery. E., with the acquiescence of S., gave the securities to M., a money-dealer in London, for the purpose of his raising money on them from joint stock banks. M. obtained an advance from the banks by depositing together with the securities of other with them, having first filled in the of the nominees of the banks in the transfers of way stock. M. afterwards became the claimed to hold the stock & for all the debt due from him

to be

*JOINT STOCK*

(Ch. D. 95; 56 L. J. Ch. 500; 55 L. T. W. R. 220; 3 T. L. R. 68, C. A.; *reversed* per point *sub voce*. *SHEPHERD* (KAR *JOINT STOCK BANK* (1888), 13 App.

H

(1891), 85 L. T. 313;  
1891, 13 App. 13

of A

(1890), 13 App. 13

(1890), 13 App. 13

(1890), 13 App. 13

(1891), 85 L. T. 313;  
75 L. J. Ch. 529;  
(1891), 109 L. T. 550;  
2 K. B. 168

H.

first

to be exchanged for certificates.

by the custom

passed from hand to hand by

transfer. The broker deposited the bonds

its, his bankers, in exchange for certain

other securities for his private account, which had been overdrawn for some time. Defts.

was aware that H. was a broker, but was

that he was depositing his customer's

H. having failed to repay the overdraft on his account, the bank claimed to hold the

& refused to deliver them to plff. In an

by plff. against the bank to recover the

or their equivalent: *Held*: plff. was not

to recover as against the bank, inasmuch as the negotiable instruments, & the bank

holders for value, & the mere fact

that the bank manager knew that

with

were not his own, or to cast on them the

making inquiry.—*BAKER v. NOTTINGHAM &*

*TINGHAMSHIRE BANKING CO.* (1891), 60 L. J. Q. B. 542; 7 T. L. R. 235.

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brokers to withdraw the deposited securities from to time, as

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& were adjudicated bkpts. At the date of in

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The client claimed to be entitled to the securities on paying to which was due from himself to bank claimed to hold the securities until pay of a larger amount while was due to the from the brokers. The client that the authority w/ replodge his to only for an amount not what himself to them: *Held* the

without

the amount due from

& r l

8 L. T. 313; 42 W. R. 110; D T. L. R. 202 3 R. 120.

Secured by proceeds of sale

Plff. was the holder of some of of a loan issued by the Govt. of Peru, & defts. in England of that govt. Each bond a statement that "as a guarantee for the fulfilment of the obligations contracted in this Peru, under the

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& in America after the contracted on them are a which the

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into arrears. Plff.'s statement of claim that the guano had been forwarded by govt. to defts., & received by them for the of meeting the interest on the bonds, & that

&

by them, in the first place, in payment of on the bonds. Notice of to the republic, but or money in

to

statement of claim: *Held*: the of

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country

2.—*What instruments are*  
4 & 5.)

which issued them, without the consent of the  
vt., & the bonds gave plff. no right of  
\* (1877), 5 D. 46  
L. J. Ch. 510; L. T. 752, C. A.

**2872.** — *Interest coupons on separate piece of paper—Whether negotiable without coupons.*—  
Z. deposited with defts. certain Prussian Con-  
bonds to secure an overdraft. The bonds  
had stolen from plff., but the coupons, which  
documents from the bonds, remained  
in the possession of plff. At the trial of an action  
by plff. against defts. to recover the bonds it was  
proved that by the custom of the London Stock  
Exchange the tender of such bonds without the  
coupons would not amount to a good delivery. —  
the bonds without the coupons were not  
instruments, & plff. was entitled

(1887), J. B.  
35 W. R. 3 T. L. R. 441, C. A.  
Bank, W

Jas. Venables v. Darling, (1892) 3 Ch. 5  
Exploration Co. v. London Trading 2 Q. B.

**2873.** — *With coupons attached.*—

with a stockbroker, for safe custody  
to b

which passed by delivery on the London Stock  
Exchange. The broker sold the bonds, without  
authority, & repurchased others of the same kind,  
which he entered in his books as belonging to  
with

to bank to cover an advance to  
Tt r became insolvent,  
ne the bank to recover the bonds or  
their Held: the bank were *bond fide*  
for value of negotiable instruments,  
e, & plff. could not recover.

The clas "in question are foreign bonds  
with attached payable to bearer. Ad-  
they pass from hand to hand on the  
hange, & according to the evidence of  
manager, who was not cross-examined  
int, they are dealt with as negotiable  
s. I do not see on what ground they  
denied the quality of

In a matter of this sort

to set up distinctions which are not

in

L. T. 625; P. 644; 41 W. R. T. L. R.  
478, H. L.

**Distd.**

(1907) 5 K. B. 735.  
Bank, (1893) 2 Ch.  
(1895) 2 Q. B. 539 **Mentd.** Baker v

L. J.  
A. C.  
Mab.  
Gill

Smith, (1905) 2 H. 172

**PART XX. SECT. 2.**

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2876 L

R. 138.—CAN  
In

r. Mills, Curria. K. B. H.

on deed of trust referred  
to in bond.—Foreign railway bonds "to bearer,"  
dependent on a deed of trust referred to in the  
Held: to be negotiable instruments  
to the law merchant.—VENABLES v.  
BROTHERS & Co., (1892) 3 Ch. 527; 61  
L. J. Ch. 609; 67 L. T. 110; 40 W. R.  
Sol. Jo. 556.

**2875. Bordereaux & coupons accompanying  
foreign bond—Issued by foreign government—  
Whether negotiable without bond.**—The Nea-  
litan govt. raised money upon certain certificates  
rente or bonds. With each certificat or bond  
delivered a document called a bordereau,  
to which were a series of coupons, or  
for successive half-yearly payments of the  
or dividends. When the coupons attached  
to the bordereau were all made use of, the holder  
of the certificat & remaining bordereau was  
entitled to receive from the Neapolitan Govt., a  
bordereau with a new set of coupons; both  
instruments referred to the certificat, & they  
never sold in the London market without  
accompanied by the certificat. Plff. being  
sed of certain of the certificats & bordereaux,

the latter with his broker for the purpose  
of his procuring from the Neapolitan Govt. new  
bordereaux, retaining the certificats in his own  
hands. The broker having procured the new  
bordereaux with coupons, fraudulently pledged  
them with deft. In detinue by the original owner,  
it was left to the jury to say whether the bordereaux  
& coupons, unaccompanied by the certificats, were  
negotiable securities, passing by delivery, in the  
same manner as bank notes, Exchequer bills, &  
the like instruments, & whether deft. had exercised  
due caution in receiving them from the broker,  
without inquiring for the certificats to which they  
referred; Held: the direction was right, & the  
verdict found for plff. should not be disturbed.—  
LANG v. SMYTH (1831), 7 Bing. 284; 5 Moo. & P.  
9 L. J. O. N. C. P. 91; 131 E. R. 109.

337 **Consol. G.** v. Roberts (1875), L. R. 10  
**Reid.** r. Bank of England (1846).  
10 476 r. I & County Co.  
H 313 r. Windle (1  
N 25 Bank of  
187 T. L. R. 497.

**Debenture bond to bearer.**— Nos. 2877-2882,

**2876. Payable to order—In form of promissory  
note.**—The articles of association of a co. contained  
no provisions as to the issue of negotiable instru-  
ments, but the objects of the co. were such that a  
power to issue them was to be implied. The  
directors gave to H. for value an instrument under  
of the co., headed "debenture," &

its debentures were  
handed to the by C. in  
The y for a were in



# XX.—NEGOTIABLE INSTRUMENTS OTHER THAN BILLS OF EXCHANGE, ETC. 440

as a deed, by which the co. "undertake to pay to the order of H., on July 1, 1867," £1,000, with

L. R. 11 Eq. 478; 40 L. J. Ch. 19 W. R. 223.

T.

warrants:—*Held*: the indorsee & transferee for value of such instrument was entitled to prove on it against the co. free from between H. & the co. *Semble* (PART-V the instrument was a promissory note, but, if not the co. were bound by their promise, publicly held out by the instrument, that they would pay to the order of H., & could not set up against a transferee equities between themselves & must be treated as negotiable i

CITY BANK (1868), 3 Ch. App. 758; 18 L. T. 894; 16 W. R. 919, L. J.

Ten Co. (1869),  
Edwards Co. & R.

600, L. R. 11 Eq. 157; R.

L. R. 11 Eq. 478; Crouch v. Hercules  
(1870), L. R. 8 Q. B. 374; R. Hercules  
Claim (1870), L. R. 19 Eq. 302; British  
Navigation Co. v. L. R. Comrs. (1881), 7 Q.

2877. Payable to bearer in form of promissory note.—The directors of a

of

or

of

charged, in any form or manner or for any amount,"

ments. The co. issued in payment to vendors land to them instruments described on their

the "bind to pay principal sum of to interest were in there was no charge on any of

erty of in open ing up, & it originally The co. being in course of wind- ed that the co. had equities whom the *Held*: (1) the or if

to value without notice of th for the amount ERIAL LAND CO. from

with 8 in (1864), 14 C. J. 51 2877 & Payable to the

L. R. 11 Eq. 478; 40 L. J. Ch. 19 W. R. 223.  
M. Stating conditions as to a corp., for or at an to M. bought by not CH. R. D (1873), L. R. 8 Q. B. T. 259; 21 W. R. 940. L. R. 10  
H. D  
R  
Baker T. 787.

T. L. R. by of co. in England of the by an by in to of them with by them. Defts. ed that in the for by from d to the debentures by L. J. T. 270; 14 T.

114, L. R. K. H. 11, 21 K. H. were not that h. t the

4 of H. on

21 N. B.

1824, 7 Q. R.

at to the of del by delivery, it is

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## 460 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 2.—What instruments are negotiable: Sub-sectn. 5 & 6.]*

**2880. — Some issued in England—Others abroad.**—Certain debenture bonds, some issued by an English co. in England & others by foreign cos. abroad, & expressed to be payable to bearer, & not being promissory notes, were stolen from plff. by his clerk. For the purpose of selling the bonds the clerk employed a broker at Bradford, who instructed debts., brokers on the London Stock Exchange. Debts., acting in good faith, entered into contracts for the sale of the bonds to jobbers. The bonds were then sent by the broker to debts., who handed them to the jobbers & remitted the price received to the broker. In an action by plff. against debts. for conversion of the bonds, it was proved that, by the usage of the mercantile world & of the Stock Exchange, bonds of the kind in question were treated as negotiable instruments transferable by mere delivery: *Held*: (1) the bonds were negotiable instruments, & when debts. received the bonds they became holders for value; (2) it was not necessary to tender evidence to prove that bonds of the kind in question were negotiable instruments, that being a fact of which the ct. would take judicial notice. *EDLSTEIN v. SCHUTTER & CO.*, [1902] 2 K. B. 144; 71 L. J. K. B. 572; 97 L. T. 201; 50 W. R. 493; 18 T. L. R. 507; 10 Sol. Jo. 500; 7 Com. Cas. 172.

*Annotations.*—*Raid*, Webb, Hale v. Alexandria Water Co. (1903), 21 L. T. R. 572; Clayton v. Le Roy, [1911] 2 K. B. 1011; *A*.

### **2881. — Whether holder subject to equities.**

B. & D. agreed in writing with the promoter of a co. to sell their business to the co. when formed, part of the purchase-money to be paid in debentures of the co. payable to bearer. The articles of assocn. adapted the agreement, & directed it to be carried into effect. The directors gave to B. & D. debentures under the seal of the co., by each of which the co. covenanted to pay the sum therein mentioned to "B. & D., their exors., administrators, & assigns, or to the bearer hereof." Some of the debentures were passed by delivery to Z., who was a bona fide holder for value: *Held*: as the debentures were conformable to the agreement between B. & D. & the promoter, which had been made binding on the co., effect must be given to them in equity according to their tenor, & in the winding up of the co., Z. could prove on the

*h* *Whether negotiable.*—Plff. bank advanced money to a partnership, receiving as security debentures of C. Co. The debentures were payable at a certain date to the bearer & purported to be on the security of a first bond, a copy of which was printed on the back of the debentures. The bank, when it received the debentures, knew that before their issue the chief assets of the co. had been ceded to & its liabilities taken over by the partnership, on condition that no further debentures should be issued without their consent. The co. was subsequently ordered to be wound up. *Held*: the debentures were negotiable instruments, & the bank was entitled to prove for the amount of the debentures on the winding up of the co. —*AFRICAN BANKING CORP. v. GRAND JUNCTION RY. LTD. (IN LIQUIDATION)* (1901), 21 S. C. 298; 17 C. T. R. 377; 8 A.F.

**2881 l. —** *Whether holder subject to equities.*—W. undertook for valuable consideration to pay the liabilities of

C. Co., including 1,700 debentures of £100 each, previously issued by the co. & payable to bearer. Thereafter the co. was ordered to be wound up, & plff., with knowledge that the co. was in liquidation, obtained custom for value of 250 debentures from W., whom claim for £25,000. If proved by him in the liquidation, would have been extinguished, inasmuch as his share of the liabilities which he had undertaken to pay was in excess of £25,000.

*Held*: plff. had no greater rights in respect of the debentures, even regarded as negotiable instruments, than W. would have had if he had proved them instead of selling them to plff. *WALKER v. STREET* (1911), App. D. 111; 8 A.F.

*l. —* *Suff. to enforce payment.*—*Necessary parties.*—A bill being filed by the holder of debentures, issued by debts. & payable to bearer, to enforce payment of the debentures, the co. objected that the person to whom the debentures were issued, was a necessary party to the suit, but did not name the

debentures in his own name, without being subject to any equities existing between the co. & B. & D. *Semle*: they could not at law be sued upon by the bearer in his own name. *Qu.*: whether they were good at law as bonds or not.—*Re BLAKELY ORDNANCE CO., Ex p. NEW ZEALAND BANKING CORPN.* (1887), 3 Ch. App. 154; 37 L. J. Ch. 418; 18 L. T. 132; 16 W. R. 533, L. J.

*Annotations.*—*Consd.* *Re General Estates Co., Ex p. City Bank* (1888), 3 Ch. App. 758; *Re Natal Investment Co.* (1888), 3 Ch. App. 355; *Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1870), L. R. 11 Eq. 478. *Raid*, *Pelliss v. Neptune Marine Insce.* (1880), 28 W. R. 405. *Mentd.* *Re Rhos Hall Co., Ex p. Birmingham Bank* (1868), 17 W. R. 343, n.; *Higgs v. Northern Assam Tea Co.* (1869), L. R. 4 Exch. 387; *Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374; *Re Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim* (1883), 24 Ch. D. 85. *Re Goy, Farmer v. Goy* (1900), 69 L. J. Ch. 481; *Re Tasker, Hoare v. Tasker*, [1905] 2 Ch. 587.

**2882. —**—A co. gave to C. debentures, by each of which the co. undertook to pay "C., or to his exors., administrators, or transferees, or to the holder for the time being of this debenture bond," the sum therein mentioned, with interest. The debentures were given in pursuance of an agreement, which provided that part of the price of land sold by C. to the co. should be paid in debentures bearing interest, but did not say anything about the form of the debentures:—*Held*: there was nothing in the debentures to take them out of the ordinary rule, that the assignee of a chose in action took it subject to all the equities between the original parties to the contract, & the holders of the debentures could only prove on them subject to all equities between the co. & C.—*Re NATAL INVESTMENT CO., FINANCIAL CORPN. (CLAIM)* (1868), 3 Ch. App. 355; 37 L. J. Ch. 302; 18 L. T. 171; 16 W. R. 637, L. C.

*Annotations.*—*Expld.* *Dickson v. Swansea Vale, etc., Ry. Co.* (1868), L. R. 4 Q. B. 41. *Distd.* *Re General Estates Co., Ex p. City Bank* (1888), 3 Ch. App. 758. *Consd.* *Higgs v. Northern Assam Tea Co.* (1869), L. R. 4 Exch. 387. *Appld.* *Re South Blackpool Hotel Co., Ex p. James* (1869), L. R. 8 Eq. 225. *Consd.* *Re Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge* (1870), L. R. 11 Eq. 478. *Re Romford Canal Co., Pocock's Claim, Trickett's Claim, Carew's Claim* (1883), 24 Ch. D. 85. *Raid*, *Re Rhos Hall Co., Ex p. Birmingham Bank* (1868), 17 W. R. 343, n.; *Crouch v. Credit Foncier of England* (1873), L. R. 8 Q. B. 374. *Re Hercules Insce., Brunton's Claim* (1874), L. R. 19 Eq. 302. *Bickerton v. Walker* (1885), 31 Ch. D. 151. *Mentd.* *Aberaman Ironworkers' Wicket* (1868), L. R. 3 Eq. 485.

*See, generally, COMPANIES.*

person.—*Held*: the co. must be presumed to know who this person was, there was no presumption that plff. knew him; & the objection could not be insisted on at the hearing.—*WOODSIDE v. TORONTO STREET RY. CO.* (1868), 14 Gr. 400.—*CAN.*

*k. Certificates of Dublin corporation.—Whether negotiable by delivery.*—The bonds or certificates of Dublin corpns., certifying that A., or the holder or bearer thereof for the time being, had become entitled to the principal sum of £100, chargeable on estates of the corpns., with interest, etc., are not instruments negotiable by delivery only.—*GORDON v. CUMING*, (1877) 1 Rod. & B. 36.—*IR.*

*l. Grand Canal debentures.—Whether assignable by delivery.—Effect of custom.*—Grand Canal debentures are not assignable by mere delivery; not will proof of a custom that such debentures have been dealt with & taken as assignable securities, give the assignee a right to recover.—*NORMAN v. RAITT*, [1816] 10 L. L. R. 207.—*IR.*



## PART XX.—NEGOTIABLE INSTRUMENTS OTHER THAN BILLS OF EXCHANGE, ETC. 451

### SUB-SECT. 6.—SCRIP AND SHARE WARRANTS AND CERTIFICATES AND TRANSFERS.

**2883. Scrip certificate—Transferable by mere delivery—Issued by joint stock company.**—Scrip receipts for shares in a joint stock co. are transferable by being passed from hand to hand. — *ACRAMAN v. COOPER* (1844), 3 L. T. O. S. 284, N. P.; *subsequent proceedings* (1845), 4 L. T. O. S. 115, 339.

**2884. ——— Issued by foreign government.** — The scrip of a foreign govt., issued by it on negotiating a loan, which scrip promises to give to the bearer, after all instalments have been duly paid, a bond for the amount paid, with interest, is by the custom of all the stock markets of Europe a negotiable instrument, & passes by mere delivery to a *bona fide* holder for value. English law follows this custom, & any person taking it in good faith obtains a title to it, independent of the title of the person from whom he took it. — *GORDWIN v. ROBERTS* (1870), 1 App. Cas. 476; 45 L. J. Q. B. 748; 35 L. T. 179; 21 W. R. 987, H. L. *Annotations*. *Folld.* *Humbell v. Metropolitan Bank* (1877), 2 Q. B. D. 191. *Dodd.* *France v. Clark* (1844), 20 Ch. D. 257. *Appl.* *Easton v. London Joint Stock Bank* (1886), 31 Ch. D. 95. *Consd.* *London & County Banking Co. v. London & River Plate Bank* (1887), 20 Q. B. D. 212. *Folld.* *London Joint Stock Bank v. Simmons*, (1892), 1 Q. B. 201. *Bechuanaland Exploration Co. v. London Trading Bank*, (1898), 2 Q. B. 659. *Consd.* *Webb, Hale v. Alexandria Water Co.* (1905), 93 L. T. 339. *Held.* *Colonial Bank v. Hepworth* (1887), 16 Ch. D. 36. *Parker v. London & County Banking Co.* (1887), 15 Q. B. D. 512. *Sheffield v. London Joint Stock Bank* (1888), 13 App. Cas. 335. *Williams v. Colonial Bank*, *Williams v. London Chartered Bank of Australia* (1888), 35 Ch. D. 288. *Bechuanaland v. London Joint Stock Bank*, (1897), 2 Ch. D. 120. *Feldstein v. Schuler*, (1902), 2 K. B. 144. *Held.* *Johnson v. Credit Foncier Co.* (1877), 34 L. T. D. 32. *Williams v. Ayers* (1877), 3 App. Cas. 131. *Bickerton v. Walker* (1880), 31 Ch. D. 151. *King Act. Soc. v. Union Bank of London* (1889), 12 Q. B. 705. *Colonial Bank v. Cady & Williams*, *London Chartered Bank of Australia v. Cady & Williams* (1890), 15 App. Cas. 267. *Brushwood v. Magniac*, (1901), 3 Ch. D. 306. *Clayton v. Le Roy*, (1911), 2 K. B. 1931.

**2885. ——— Issued by banking company.** — Scrip certificates, by which it was certified that, after the payment of certain instalments, the bearer thereof would be entitled to be registered as the holder of shares in a banking co., were issued to plff., & by him deposited with a stockbroker for the purpose of paying the instalments remaining due, & dealing with such certificates as plff. should direct. The broker in fraud of plff., & without his authority, deposited the scrip with defts. as security for an amount due from him, the broker, to defts. Defts. were not aware of the fraud. It was proved that the usage among bankers, discounters, money-dealers, & on the Stock Exchange, had been for many years to treat such scrip certificates as negotiable instruments transferable by mere delivery. — *Held*: defts. were entitled to the scrip certificates as against plff. on the ground that by reason of the usage the certificates had become negotiable instruments transferable by mere delivery. — *RIMMALL v. METROPOLITAN BANK* (1877), 2 Q. B. D. 191; 46 L. J. Q. B. 346; 36 L. T. 240; 25 W. R. 306, D. C. *Annotations*. *Folld.* *Bechuanaland Exploration Co. v.*

*London Trading Bank*, (1898), 2 Q. B. 658; *Webb, Hale v. Alexandria Water Co.* (1905), 93 L. T. 339. *Held.* *Simmons v. London Joint Stock Bank*, *Little v. London Joint Stock Bank*, (1891), 1 Ch. 270.

**2886. Share warrant to bearer—Certifying bearer entitled to share—Issued by English company under Companies Act, 1867 (c. 131).** — A share warrant to bearer, issued by a co. registered in England under the above Act, the warrant certifying that the bearer is entitled to one share of the co., is, by mercantile usage, a negotiable instrument. — *WEBB, HALE & CO. v. ALEXANDRIA WATER CO.* (1905), 93 L. T. 339; 21 T. L. R. 572, D. C.

**2887. Share certificate & transfer—General rule.** — Plff., wishing to sell certain shares of which he was the owner, was induced by his broker to execute a transfer, leaving a blank for the broker to insert the numbers & description of the shares. The broker fraudulently filled up the blank with the numbers & description of other shares belonging to plff., but in a different co., namely, that of defts., & passed the transfer as a genuine transfer to a purchaser. By the rules of defts. co. it was necessary to produce certificates of the shares before a purchaser's name could be entered on the register as the holder of the shares. The certificates of the shares in question were kept by plff. in a box in the broker's custody. The box was locked, & plff. kept the key, but the broker managed to get a duplicate key & stole the certificates, & produced them with the transfer, & the name of the purchaser was registered. In an action by plff., claiming damages & a mandamus to have his name restored to the register in respect of the shares: — *Held*: plff. had been guilty of no false representation or culpable negligence such as estopped him from charging that the transfer deed was a forgery.

In some cases a man may be estopped from saying that a deed is not his deed, as for instance, if the vendor of real property should personally receive the purchase-money, & hand over as his conveyance that which really was not his deed: undoubtedly he would be estopped from saying so. But I cannot think that any analogy can be safely drawn between such a case & the cases of negotiable instruments, where such estoppels are very common, & where, great as is the injustice which they inflict, the argument of inconvenience is so strong, that it is necessary that they should exist. The strongest case is, where a man loses or parts with his name written on a piece of stamped paper. There he is responsible to any *bona fide* holder, where it is filled up as a promissory note or as a bill of exchange, to an amount warranted by the stamp. In the case, which was alluded to in argument, of an acceptor who accepts a bill of exchange, he is estopped from denying that the signature is the genuine signature of the drawer. To apply those rules to solemn instruments like deeds, where the same inconveniences are not to be avoided, seems to me to be equally novel & dangerous (BYLES, J.). — *SWAN v. NORTH BRITISH AUSTRALIAN CO.* (1863), 2 H. & C. 175; 2

### PART XX. SECT. 2, SUB-SECT. 6.

**2888. Scrip certificate—Whether negotiable.** — Scrip certificates, made out in the name of plff. co. & indorsed by it in blank, were stolen & sold to defts. who purchased them without notice & in good faith. In an action to

recover the scrip — *Held*: (1) the certificates were not negotiable; (2) plff. was estopped from disputing defts.' title. — *UNITED SOUTH AFRICAN ASSURANCE*, 170, v. *CONS* (1901), T. 3, 713 — S. A.P.

**2887. Share certificate—With blank transfer deed.** — Share certificates pass-

ing from hand to hand with blank transfer deeds do not thereby become negotiable instruments. — *HALLAM v. BECHUANALAND EXPLORATION CO.* (1910), 1 L. R. 46, Cade. 231; 72 C. W. N. 1024 — IND.

**2887. H. N. P. ROSSCHARD JAVRIDA**

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New Rep. 521; 32 L. J. Ex. 278; 10 Jur. N.  
102; 11 W. R. 802; 150 E. R. 73, Ex. Ch.

*Associations*:—*Consol. Hunter v. Curling, Curling v. Walters, v. Hunter* (1871), 1 Ch. App. 75; *Haltax Ordre, v. Wheelwright* (1874), L. J. 18 Exch. 183; *Soc. Generale de Paris v. Walker* (1885), 11 App. Cas. 20. *Appl. Vagliano v. Bank of England* (1888), 22 Q. B. D. 102. *Consol. Scholfield v. Scholfield* (1895), 1 Q. B. 536. *Consol. Scholfield v. Scholfield* (1896), A. C. *Consol. Union Credit Bank v. Mercury Ducks v. Name & North Wales Bank*, [1899] *Foster v. Macmillan* (1899), L. R. 4 *Clayton v. Brown* (1877), 47 L. J. Ch. 168; (1884), 20 Ch. D. 257; *Carthale & Co. v. Bragg*, [1911] 1 K. B. 489; *London Joint Bank v. Macmillan & Arthur*, [1918] A. C. 777. *Hopital v. Bryan* (1863), 3 H. & N. 474. *Re Bahia Tobacco Ry. Co.* (1868), L. R. 3 Q. B. 584; *Arnold Bank, Arnold v. City Bank* (1876), 1 C. P. D. 477; 3 C. P. D. 1; *onnals Co.* (1877), 3 C. P. D. 37; (1878), 3 Q. B. D. 525; *Coventry* 35, 11 Q. B. D. 776; *Hall v. West* (1883), 13 Ch. & El. 161; *Staple of*

borough.

71 L. T. 6  
Humber v.

(1909) 2 K. B. 1010; *Macmillan v. L. Bank*, [1917] 2 K. B. 439;  
10, 35 T. L. R. 617.

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of the of his shares, with a  
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up the transfer & obtaining registration in  
his own name for the purpose of giving effect to  
the contract, but does not entitle him to  
his authority to a third person for a purpose  
to the contract. A third person who, for value,  
blank transfer & certificates from the  
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if such person has obtained regis-  
in his own name, by filling up the blanks in  
the transfer, without the knowledge & consent of  
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for an advance of £250. Q. filled up

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to him. *FRANCE v. CLARK*  
(1884), 20 Ch. D. 257; 53 L. J. Ch. 585; 50 L. T.  
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*Held. Hutchison v. Colorado United Mining Co., Hamill v. Lilley* (1884), 3 T. L. R. 205. *Dodd, Faulks v. Atkins* (1883), 10 T. L. R. 178. *Consol. Fox v. Martin* (1884), 6 L. J. Ch. 473; *Hardman v. Wheeler*, [1907] 1 K. B. 361; *Montagu v. Weston, Clevedon & Perthshire Light Ry. Co.* (1903), 10 T. L. R. 272; *Dodd, Fry v. Smellie*, [1912] 3 K. B. 282. *Consol. Macmillan v. London Joint Stock Bank*, [1917] 2 K. B. 439. *Held. Williams v. Colonial Bank, Williams v. London Chartered Bank of Australia* (1888), 28 Ch. D. 288; *Powell v. London & Provincial Bank*, [1883] 2 Ch. 555; *London & Midland Bank v. Mitchell*, [1899] 2 Ch. 161; *Watkin v. L. T.* 483; *L. T.* 444. *Held. Easton v. London Joint Stock Bank* L. T. 679; *Simmons v. London Joint Stock Bank, Little v. London Joint Stock Bank* (1890), 59 W. R. 449; *Moore v. North Western Bank* (1891), 61 L. T. 456; *Watkin v. & Robertson* (1901), 17 T. L. R. 777; *Stubbs v. L. T.* 444.

—A share certificate is, under  
Com. Act, 1862 (c. 80), s. 31, *prima facie* evidence  
only of the title of the registered holder of the  
shares specified therein: it is not a negotiable  
instrument, nor is it a warranty of title on the part  
of the co. issuing it.—*LONGMAN v. BATH ELECTRIC*  
*TRAMWAYS, LTD.*, [1905] 1 Ch. 646; 74 L. J. Ch.  
424; 92 L. T. 743; 53 W. R. 480; 12 Mans. 147,  
C. A.

*Annotation*:—*Held. Rainford v. Keith & Blackman Co.*  
(1905), 74 L. J. Ch. 531.

2890. — Issued by American railway company  
—Transferable in person or by attorney—On books  
of company.—An American railway co., having  
its sole office in the United States, issued under its  
seal certificates for its share capital. Each cer-  
tificate purported to certify that H. & Co., who  
were the co.'s correspondents in England, were  
entitled to twenty shares in the capital stock of  
the co. "transferable only in person or by attorney  
on the books of the co." Upon the back of each  
certificate was indorsed a power of transfer under  
seal; it was in effect an absolute transfer of the  
shares represented by the certificate, followed by  
an irrevocable power of attorney "to the use of  
the above named assignee to make & execute all  
necessary acts of assignment & transfer of the  
stock in the books of the co."; this was signed by  
H. & Co., the names of the transferee & of the  
attorney being both left in blank. The object of  
the power was to enable an English holder to  
appoint an attorney to act for him in America,  
where alone a transfer could be registered. It was  
proved that when thus signed in blank the cer-  
tificates, by the usage of English bankers & dealers  
in public securities, were transferred by mere  
delivery, & were dealt with like bonds payable to  
bearer:—*Held*: the certificates were intended to  
pass by transfer only & not by mere delivery &  
were not negotiable instruments.—*LONDON &*  
*COUNTY BANKING CO. v. LONDON & RIVER PLATE*  
*BANK* (1887), 20 Q. B. D. 232; 4 T. L. R. 179;  
(1888), 21 Q. B. D. 535, C. A.

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see. (1861), 7 Jur. N. S. 587; *Schulthold v.*  
(196) A. C. 511; *London Joint Stock Bank v. Macmillan*  
*Arthur*, (1918) A. C. 777.

**2894. Marginal letter of credit.**—The N. Bank  
of Scotland & other banks were in the habit of  
giving certain quasi negotiable instruments to  
merchants in England called marginal letters of  
credit, in favour of such merchants carrying on  
business abroad, for sums of money required for  
the purpose of produce abroad, & against which  
drafts equivalent in amount to the sums indicated  
in the marginal letters of credit were drawn on the  
in England. Where it was alleged & made  
by *prima facie* evidence that such marginal  
letters of credit had been improperly used for pur-  
poses different from the purchase of produce,  
the court held that the drafts were not  
valid for the purpose of which they were  
drawn.

drawn in & remitted for  
the purpose of which drafts  
were drawn. *Held*: the court would  
not interfere.

into the bankers on whom they  
were drawn, & also restrain the  
bankers from accepting or paying such drafts. *MAITLAND*  
*v. CHARTERED MERCANTILE BANK OF INDIA,*  
*INDIAN & CHINA* (1867), 12 L. T. 372;  
*proceedings*, 2 Hem. & M. 440, and  
L. J. Ch. 303.

*Annotation*. *Mentd.* *Union Bank of Canada v. Cole*  
(1871) 1 Q. B. 100.

**2895. Circular note.**—A circular note is not  
negotiable. (WILLES, J.).

L. J. Ch. 17 L. T. 2 R. 3 C. P.  
W. R. 127.  
Vol. III.,

**Bank post bill.**—  
Vol. III., pp. 145, 146, 173, 2

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*v. ANGLO-AUSTRALIAN & UNIVERSAL FAMILY*  
*ASSURANCE CO.* (1861), 3 Q. B. 238; 5 L. T.  
8 Jur. N. S. 146; 10 W. R. 290; 66 E. R. 397.

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his title to the money in the event of the note being

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withheld, the county ct. had jurisdiction to try  
the case.

This is different from the case of an action to  
recover the value of a bank note, which is a nego-  
tiable instrument. In an action of detinue to  
recover a deposit note, the action is not to recover  
the whole amount described upon the note, because  
that is recoverable without the production of the  
actual note. Here we are not concerned with an  
instrument which is negotiable in its character  
(DAY, J.).—*CLEGG v. BARETTA* (1887), 56 L. T.  
775, D. C.

*Held*. *Davies & Sims v. London & South*  
1 Q. B.

—A deposit note of a bank is not a  
negotiable instrument.—*Re DILLON, DUFFIN v.*  
(1890), 44 Ch. D. 76; 59 L. J. Ch. 420;  
62 L. T. 614; 38 W. R. 369; 6 T. L. R. 204, C. A.

*Annotations*. *Mentd.* *Re Andrews, Andrews v. Andrews*,  
(1902) 2 Ch. 391; *Re Beaumont, Beaumont v. Ewbank*,  
(1902) 1 Ch. 889; *Re Weston, Bartholomew v. Menzies*,  
(1902) 1 Ch. 680; *Re Wasserberg, Union of London &*  
*Smith's Bank v. Wasserberg*, (1915) 1 Ch. 195; *Re Lee*,  
*Treasury Solicitor v. Parrott* (1918), 87 L. J. Ch. 594;  
*Re Westerton, Public Trustee v. Gray*, (1919) 2 Ch. 104.

**2899.**—The indorsement & delivery of a  
banker's deposit receipt, with the intention to  
make a gift, operate as a good equitable assignment  
of the amount on deposit at the bank; but, if  
anything be required to complete the gift, the  
assent of the donee as exor. of the donor  
is necessary.

A deposit receipt is clearly not a negotiable  
instrument (BYRNE, J.).—*Re GRIFFIN, GRIFFIN v.*  
*GRIFFIN*, (1899) 1 Ch. 408; 68 L. J. Ch. 220; 79  
L. T. 442; 15 T. L. R. 78; 43 Sol. Jo.

*Annotations*. *Mentd.* *Re Smith, Bull v. Smith*  
L. T. 815; *Re Westerton, Public Trustee v. Gray*,  
2 Ch. 104.

**2900. Banker's receipt for bonds**—Deposited for  
registration.—A banker's receipt for bonds de-  
posited for registration is not, either in law or by  
the custom of the Stock Exchange, a negotiable  
instrument passing the property in the bonds by  
delivery.—*BEAUCLERK v. GREAVES* (1880), 2  
T. L. R. 837.

**2901. Dividend warrant.**—A dividend warrant  
for payment of dividends upon 3½ per cent. stocks  
is not a negotiable instrument assignable by mere  
delivery. *PATRIDGE v. BANK OF ENGLAND*  
(1846), 9 Q. B. 396; 15 L. J. Q. B. 395; 8 L. T. O. S.  
195; 10 Jur. 1031; 115 E. R. 1324, Ex. Ch.

*Annotations*. *Consd.* *Crouch v. Credit Foncier of England*  
(1873), L. R. 8 Q. B. 374; *Goodwin v. Roberts* (1875),  
L. R. 10 Exch. 337. *Expld.* *Goodwin v. Roberts* (1876),  
1 App. Cas. 476. *Mentd.* *Graves v. Long* (1857), 5 W. R.  
597.

2 Act, s. 97 (3)

**2902. East India warrant.**—East India war-  
rants.—*Held*: not negotiable.

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1. 3 B. & Ad. 320; 1 L. J. K. B. 114; 110 E. R. 120.

*Annotations*:—*Mentz*, *Boast v. Stewart* (1842), 1 Man. & G. 295; *Cole v. North Western Bank* (1873), L. R. 10 C. P. 351; *Stevenson v. Hilton*, (1894) 2 Q. B. 157.

**2903. Army pay warrant**—Footnote directing presentment through London banker & authorising negotiation in country or abroad.—A retired army officer, not liable to be called upon to serve again, in order to obtain his pension money, had each quarter to fill up & sign a form of pay warrant, which contained a declaration signed by him that he was entitled to the amount of the retired claimed, & also a receipt for the amount. The warrant also contained a footnote that "this receipt must be presented for payment by a London banker, but may be negotiated in the country or abroad, & is to be left by the banker at the master-General's office one day for examination." On Jan. 1, 1909, the officer handed to the form of pay warrant duly

£17 12s. 6d., the amount due to him, & the bank immediately credited his account with that amount, although they did not actually receive payment of the amount of the warrant from the Paymaster-General until Jan. 7: *Held*: the document signed by the officer & handed to the bank on Jan. 1 was only a receipt & not a

no effect until the  
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S. & Co. L. J.  
2 K. B. 1029; 79 L. J. K. B. 41; 101 L. T. 2  
25 T. L. R. 736; 53 Sol. Jo. 734, D. C.

**2904. Dock warrant**.—The pawnee of goods lodged in the West India Docks, & entered there in the

indorsed them with an order for of the goods to blank, in exchange, not for which he might have had, but for a for the debt

contracted to sell the goods to pitta, & payment for them, & gave to pitta, the notes, with the blank above deft.'s signature for the name of the person to whom they were to be delivered: *Held*: the ct. would that, according to a

of the Docks, an indorsement on the dock or dock warrants was, of itself, & making the wharfers parties to the of transferring any property

7 Taunt. 265; 1 Moore, C. P. 12; Holt, N. P. 396, n.; 129 E. R.

**2905.**—Qu.: the delivery checks or warrants of the W will pass the property in the goods

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& it is also known to them that the by indorsement of it, & there is no hy they should not: it is a transfer of a mere & there is no reason why an order for of the goods [should] not should have thought, independently of the to the dock co., that the property by the mere indorsement for a tion (*Bennett v. J.*)—*Lucas* 7 Taunt. 278; 1 Moore, C. P.

E. R.  
26 L. J.  
& 11.

*v. Home* (1846), 5 L. T. O. N. 777.

**2906. Iron scrip note**—Goods f.o.b. to bearer.—D. contracted to S. & Co. with iron in the following terms: July 10, I will deliver one res on board here, when 10 next, to the party lodgin. with me, f.o.b. in Glasgow. S. & Co. sent to H. & Co. for the price of U delivered it to H. & Co., without any H. & Co. &

such a could not confer a of action of M N. S. 1013; 4 W 13, H. L. 1 App 16

**Iron warrant**—Goods deliverable f.o.b. to buyers or assigns On indorsement. Delft, contracted to make & deliver rails by equal monthly quantities to be paid for, as to part of the price, by the buyers' acceptances at date, & at the request of with each delivery a to be for rails, deliverable f.o.b. to the buyers or to their assigns by indorsement. The the warrants with pitta, & all bkpt.: *Held*: by the usage of the the warrants in

L. J. Ch. 118; L. 5; 25 W. R. 157.

**2908. Wharfinger's certificate**.—B & iron rails to the A. co. by a written

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in B. & Co.'s possession. Pltf. advanced money to the A. co. on the security of some of the wharfinger's certificates, which were handed over to him with a written memorandum. The A. co. became insolvent, & their acceptances were not paid. Pltf. filed a bill against B. & Co. & the receiver of the estate of the A. co., claiming a lien on the rails in the hands of B. & Co. in priority to their lien as vendors. The bill alleged that, according to the custom of the iron trade, the wharfinger's certificates were in fact "warrants";

the wharfinger's certificates were not of title, & their delivery passed no right to the goods, & that no custom of trade could give them the effect of "warrants" or documents of title as against the vendors.

Then it is said that there is a custom of the trade to treat these certificates as warrants. In the first place, there is no evidence of such a custom. But if the custom were proved, I cannot understand how any practice of raising money in that way can affect the vendor's rights. The vendor, having agreed by his contract that he would give

or that the pur-

actually to be shipped, cannot help giving the cert & how the fact of his giving that certificate, which does not profess to be negotiable, & does not profess to require the delivery of the goods to or to bearer, or anything of the kind, can

chooses to borrow money on the faith of it, at a loss to conceive (MELLISH, L.J.).

BOLCKOW, VAUGHAN & CO. (1875), 10 401; 44 L. J. Ch. 732; 32 L. T. 781; 23 W.

2 Ch. 421

**Mate's receipt.** A real custom making able w not bind the

G. L. J. L. R. 17 Eq. 92; 43 T. Asp. M. L. C. 170; 1 D Ch. App. 730, L. J.

**Delivery order - Signed by vendor of on board ship - Addressed to master porter of ship.**

A delivery order, signed by the vendor of to of the ship, is not a give an indorse the right to the vendor upon it for x the de r, upon the by him to

that the goods are in to his order. GILBERTSON & CO. v. COLTMAN, LTD. (1901), 15 T. L. R. 21

at of will act as a 172. SCOT. it to BANK or 21 V. L. AUG. A th will

**2910. Advice note—Sent by railway company to consignee—Advising arrival of goods held to order.**

A railway co. sent to B. & Co., consignees of wheat, an advice note stating that the wheat had arrived, & was held to B. & Co.'s order. The note contained no entry of weight or charges for carriage, but across the spaces for those was written, "account to follow." At the foot of the note was a delivery form to be signed by consignees as follows: "Please deliver to blank or bearer." B. & Co. indorsed the document & handed it to S. & Co., & the railway co. agreed to hold the wheat to the order of S. & Co. Afterwards B. & Co. obtained an advance from pltf. upon the security of a delivery order for the wheat signed by S. & Co., & pltf. lodged the order with the railway co., who accepted it. Subsequently the railway co. sent another advice note to B. & Co., which differed from the first in some particulars, & across the top of which was written, "charges only," but which was upon the same printed form as the first. The two advice notes related to the same consignment of wheat. B. & Co. obtained a second advance from pltf. upon the security of the second advice note by fraudulently representing that it related to another consignment of wheat. B. & Co. thereupon signed the delivery form on the second note, & filled in pltf.' names, & handed it to them, & they lodged it with the railway co., who accepted that order also:— *Held*: although the advice notes were not negotiable instruments, yet, from the form in which they were drawn, & the mode in which debts dealt with them, they could not be taken to be in the nature of mere invoices of the goods. COVENTRY v. GREAT EASTERN RY. CO. (1883), 11 Q. B. D. 776; 52 L. J. Q. B. 691; 40 L. T. 641, C. A.

*modatima*—*Held*, Seton v. Lafone (1886), 15 Q. B. D. 179. *Mentd.* Seton v. Lafone (1887), 19 Q. B. D.

**2911. Bill of lading.**—The consignor may stop goods *in transitu* before they get into the hands of the consignee, in case of the insolvency of the consignee, but if the consignee assign the bills of lading to a third person for a valuable consideration, the right of the consignor as against such assignee is divested.

The assignee of a bill of lading trusts to the indorsement; the instrument is in its nature transferable; in this respect this is similar to the case of a bill of exchange. If the consignor had intended to restrain the negotiability of it, he should have confined the delivery of the goods to the vendee only, but he has made it an indorseable instrument. So it is like a bill of exchange, in which case, as between the drawer & the payee the consideration may be gone into, yet it cannot between the drawer & an indorsee, & the reason is, because it would enabling either of the original parties to assist in a fraud. The rule is founded on principles of law, & not on the custom of merchants. The

by D. M'C then gave it B. in security of advances & in r. B. handed it to a bank to

bkpt., the raised an upon it. for Iron. for repetition of the price & the

of by blank indorsement BANK v. KENNARD 21 Dowl. (C).



custom of merchants only establishes that such an instrument may be indorsed, but the effect of that indorsement is a question of law, which is, that as between the original parties the consideration may be inquired into, though when third persons are concerned it cannot. This is also the case with respect to a bill of lading. Though the bill of lading in this case was at first indorsed in blank, it is precisely the same as if it had been originally indorsed to this person, for when it was filled up with his name, it was the same as if made to him only (*ASHURST, J.*).—*LICKBARRON v. MASON* (1787), 2 Term Rep. 63; 6 East, 20, n.; 100 E. R. 35; *read, sub nom. MASON v. LICKBARRON* (1790), 1 Hy. Bl. 357, Ex. Ch.; *read, & venire de novo awarded sub nom. LICKBARRON v. MASON* (1793), 4 Bro. Parl. Cas. 57, H. L.; *subsequent proceedings* (1794), 5 Term Rep. 683; 6 Term Rep. 131.

*Annotat.*—*Dodd, Salomonson v. Nissen* (1788), 2 Term Rep. 674. *Apprd.* *Coxe v. Harden* (1803), 4 East, 211. *Consd.* *Newman v. Thornton* (1803), 6 East, 17. *Patten v. Thompson* (1816), 5 M. & W. 350. *Exptd.* *Thompson v. Bondry* (1815), 14 M. & W. 491. *Consd.* *Gurney v. Behrend* (1831), 3 K. & B. 622. *Glyn, Mills, Currie v. East & West India Dock Co.* (1863), 7 App. Cas. 291. *Hurdick v. Sewell* (1884), 10 Q. B. D. 363. *Exptd.* *Aptd.* *Hurdick v. Sewell* (1884), 13 Q. B. D. 159. *Consd.* *Sewell v. Hurdick* (1884), 10 App. Cas. 74. *Read.* *Waller v. Montgomery* (1803), 1 East, 550. *Christy v. Row* (1808), 1 Taunt. 300. *Martini v. Cohen* (1813), 1 M. & W. 140. *Morton v. Gray* (1824), 9 Moore, C. P. 484. *Griffiths v. Perry* (1839), 1 E. & K. 640. *Swan v. North British Australasian Co.* (1863), 2 H. & C. 173. *The Tigress* (1863), Brown & Lush. 38. *The Freedom* (1871), L. R. 3 P. C. 324. *Chartered Bank of India, Australia & China v. Henderson* (1874), L. R. 3 P. C. 501. *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337. *Smith v. Prosser* (1897), 2 K. B. 735. *Montd.* *Stutley v. Heyward* (1795), 2 Hy. Bl. 504. *Bird v. Appleton* (1800), 1 East, 111. *Hickett v. Wollan* (1819), 1 Chit. 633. *Bloxam v. Sanders* (1825), 4 B. & C. 541. *Gibbs v. Grover* (1832), 9 Bing. 178. *Re Westsylvan* (1833), 2 Nev. & M. R. B. 644. *Saunders v. Smith* (1840), 7 L. J. Ch. 227. *Gibson v. Carruthers* (1841), 8 M. & W. 321. *Brown v. Clarke* (1847), 7 Jur. 1043. *Grant v. Norway* (1851), 10 C. B. 665. *Re North British Australasian Co. & Joint Stock Companies Act* (1856 & 1857), *Ex p. Swan* (1859), 7 C. B. N. S. 400. *Taylor v. Great Indian Peninsula Ry. Co.* (1859), 28 L. J. Ch. 283. *Ex p. Swan* (1860), 30 L. J. C. P. 113. *The Marie Joseph* (1860), Brown & Lush. 449. *The Florida Maggiore* (1860), L. R. 3 A. & E. 106. *Hodger v. Comptoir D'Escompte de Paris* (1869), L. R. 3 P. C. 393. *Arnold v. Cheque Bank, Arnold v. City Bank* (1876), 1 C. P. D. 378. *Lusk v. Scott* (1877), 46 L. J. Q. B. 329. *Re Cook, Ex p. Rosemont China Clay Co.* (1879), 11 Ch. D. 560. *Re Knight, Ex p. Golding*, Davis (1880), 42 L. T. 710. *Cassanbargu v. Gibb* (1882), 11 Q. B. D. 197. *Nahmaschinen Fabrik Act v. Pickford & Lee & Harris* (1887), 4 T. L. R. 617. *Bank of England v. Vagliano* (1891), A. C. 107. *Hristol & West of England Bank v. Mid. Ry. Co.* (1891), 65 L. T. 734. *Nash v. De Freville* (1900), 2 Q. B. 72. *Farquharson v. King* (1902), A. C. 225. *Rimmer v. Webster* (1902), 1 Ch. 161. *Bentley & Co. v. Cargo Fleet Iron Co.* (1916), 1 K. B. 370. *London Joint Stock Bank v. Macmillan & Arthur* (1918), A. C. 771.

2912. —. — Bills of lading are transferable & negotiable by the custom of merchants. — *LICKBARRON v. MASON* (1794), 3 Term Rep. 683; 101 E. R. 380; *subsequent proceedings*, 6 Term Rep. 131.

*Annotat.*—*Dodd, Salomonson v. Nissen* (1788), 2 Term Rep. 674. *Apprd.* *Coxe v. Harden* (1803), 4 East, 211. *Consd.* *Patten v. Thompson* (1816), 5 M. & W. 350; *Gurney v. Behrend* (1831), 3 K. & B. 622. *Glyn, Mills, Currie*

*v. East & West India Dock Co.* (1863), 7 App. Cas. 291; *Sewell v. Hurdick* (1884), 10 App. Cas. 74. *Read.* *Martini v. Cohen* (1813), 1 M. & W. 140; *Morton v. Gray* (1824), 9 Moore, C. P. 484; *Griffiths v. Perry* (1839), 1 E. & K. 640; *The Tigress* (1863), Brown & Lush. 38; *Goodwin v. Roberts* (1875), L. R. 10 Exch. 337; *Smith v. Prosser* (1897), 2 K. B. 735. *Montd.* *Stutley v. Heyward* (1795), 2 Hy. Bl. 504. *Hristol & West of England Bank v. Mid. Ry. Co.* (1891), 65 L. T. 734.

2913. —. — An indorsee of a Spanish bill of lading, to whom the goods have been delivered under it, is liable in *assumpsit* for the freight, although the bill of lading is for delivery to the consignee, without saying "or their assigns," such bills of lading appearing by evidence to be usually passed by indorsement. — *RESTERIA v. RUDING* (1830), Mood. & M. 511; L. & Welsh. 274, N. P.

*Annotat.*—*Montd.* *Partridge v. Bank of England* (1816), 9 Q. B. 306.

2914. —. — A bill of lading: *Held*: to be a negotiable mercantile document. — *GREEN v. DUNN* (1845), 3 L. T. 448; *Shipping Gazette*, July 11.

*See, further, SHIPPING & NAVIGATION.*

2915. *Sailor's shipping note - On contingency - Payable to bearer.*—A sailor's shipping note for £2 15s., payable to A. or bearer 5 days after the ship shall sail: *Held*: an order for the payment of money within Forgery Act, 1830 (c. 66).

Neither by the custom of merchants, nor by statute, would this instrument be negotiable, since it is payable on a contingency, & the fact of its assuming to be so, by purporting to be payable to bearer, does not make any difference (*PARK, B.*). — *R. v. ANDERSON* (1843), 2 Mood. & R. 469.

*Annotat.*—*Montd.* *R. v. Dutton* (1848), 11 Q. B. 920.

2916. —. — An advance note was given to A., a seaman, for a half month's wages. The note was in the following form: "Five days after the ship W. leaves P., pay to the order of A., provided he sails in the ship & is duly earning his wages, according to his agreement," etc. It was directed to B. & Co., the shipowners' agents at P., & there was a note upon it that it should at once be presented to B. & Co. for acceptance. A. transferred the note to C., who presented it to B. & Co., by whom it was duly accepted. Four days after the W. left P. A. was discharged. The master informed B. & Co. that A. had been discharged within five days of sailing, & directed them not to pay the note. B. & Co. paid the note. On action by B. & Co. against the shipowners for the amount of the note: *Held*: as A. was not earning his wages at the end of five days after the ship left P., the condition of the note was not fulfilled, & neither the shipowners nor B. & Co. as acceptors were liable upon it.

If the note is not assignable, of what use is it to the seaman? It is not necessary, taking the view of this case that I do take, that I should express any opinion as to the validity of assignments of advance notes of this kind. I should, however, be sorry to throw any doubt upon it (*WRIGHT, J.*). — *BELLAMY & Co. v. LUX & Co.* (1897), 77 L. T. 396; 8 Asp. M. L. C. 348, D. C.

*L. Railway receipt - Whether negotiable after delivery of goods.*—After delivery of the goods to the rightful person a railway receipt ceases to be negotiable. — *MARRAS & SOUTHERN MARRAS & SOUTHERN*

*HARRINGTON* (1913), 1 L. R. 61, Mad. 411.—*IND.*

*W. Warehouse receipt - Whether negotiable after delivery of goods.*—Warehouse receipts granted to *Hedf* by a firm which has

not the custody of any goods but its own are not negotiable instruments within Mercantile Amendment Act, R. S. O. 1897, c. 122.—*TENNANT v. UNION BANK OF CANADA*, (1894) A. C. 31.—*CAN.*

**NEGT. —NEGOTIATION.****OF GOODS; EX EXCHANGE.**

**1. Liability of transferor—Defective Instrument—Guatemala bond—Not marketable.**—Pltf., a stockbroker, sold for deft. four Guatemala bonds, & paid him the amount; the bonds, after they had hands of the purchaser two to be not marketable;

pltf. took them back & reimbursed the purchaser: *Held*: pltf. was entitled to recover from deft., in an action for money had & received, the amount he had paid to deft. *YOUNG v. COLE* (1837), 3 Bing. N. C. 724; 3 Hodg. 126; 1 Scott, 489; 6 L. J. C. P. 201; 1 Jur. 22; 132 E. R. 589.

*Field v. Gompertz v. Bartlett* (1853), 2 E. & B. 3, 11 C. B. N. S. 3, C. B. 523; *Guthrie v. Hall* (1851), 1 C. B. 46, 146; *Hall v. C. Burt* (1851), 1 C. B. & El. (1857) 1 N.

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at, but by a memorandum written consented to Pltf.

by out an the bonds two they bore only 4 per cent. interest, & he then refused to the purchase. Upon assumption for non- for the bonds, the jury at the trial found that deft.'s bargain was for bonds at 5 per cent., but that pltf. intended to sell bonds at 4 per cent., & was no fraud: *Held*: the bargain for

not accepted the is in satisfaction of the bargain. *KEELE v. WHEELER* (1844), 7 Man. & G. 665; 8 Scott, N. R. 323; 13 L. J. C. P. 170; 3 L. T. O. S. 202; 135 E. R. 267.

**Issued without authority.**—Deft., a , bought for pltf. in the share East Railway

& were signed by the secretary of the railway co. The genuineness of the scrip was afterwards denied by the directors, who alleged that it was issued by the secretary without

In an action to recover back from ce paid to him by pltf. for the for his commission, on the ground of its not

*Held*: the proper question for the jury

in the market as Kentish *LAMBERT v. HEATH* (1846), 15 W. 480; 4 Ry. & Can. Cas. 303; 15 L. J. Ex.

7 L. T. O. S. 186; 10 Jur. 481; 153 E. R. 941; *subsequent proceedings*, 8 L. T. O. S. 279.

*Field v. Nicholson v. Hicketts* (1860), 2 E. & E. 497. *Alken v. Short* (1856), 1 H. & N. 210; *Kingsford v. B. N. S.* 447.

**Forged—Measure of damages.**—On 10, 1847, A. employed B., a & member of the London Stock to for him certain

which purported to be scrip or ce for fifty shares, in a projected railway co. On 27th B. sold the certificates to C., & handed over proceeds to A. The certificates being sub-

sequently found to be forged, B. was, on May 11, upon & obliged to pay, pursuant to a resolution of a committee of the Stock Exchange, to C. a certain agreed value as for genuine certificates of that co., & which considerably exceeded the price for which he had sold the spurious certificates. In an action by B. against A. to recover the sum paid by him to C., the declaration contained a

count averring a promise by A. that the certificates were genuine, & a count for money paid. Upon the latter count, A. paid into ct. the sum he had received on the original sale, with interest:—

B. was not entitled to recover upon the count, there being no promise, express or implied, that the certificates were genuine, & under the count for money paid, B. was only entitled to recover the amount actually paid by him to A. *WESTROPP v. SOLOMON* (1849), 8 C. B. 315; 10 L. J. C. P. 1, 13 Jur. 1101; 137 E. R.

*Alken v. Short* (1856), 1 H. & N. 210; *Kingsford v. B. N. S.* 447.

**2921. — Alleged foreign bill—Unstamped.**—*GOMPERTZ v. BARTLETT*, No. 3283.

**2922. — "Called bond"—Stolen.**—The Govt. of the United States in 1865 issued bonds payable to bearer, redeemable at the pleasure of the govt., after 1870, & payable, at all events, in 1885. When the govt. wished to redeem any of the bonds, they gave notice to holders by public notification that they would be paid on presentation. After such notice, the bonds notified were called "called bonds." The bonds were dealt in in England for the purpose of making remittances to America. The course of business was for the seller to supply the buyer with bonds or coupons of railway cos., etc., payable in America at an agreed price, no particular bonds or coupons being specified. It was proved that whenever default was made in payment of the coupons in America, the seller returned the money paid for them, but no evidence was given of any case in which payment of a bond had been refused. A.

to B. in accordance with the above course of bonds," which had been originally stolen from American holders, & payment to B. of the bonds was refused by the American Govt.:—*Held*: there was an warranty of title on the sale by A. to B., & B. to recover from A.

, 1 C. B. & El. 325.



## Part XXI.—I.O.U.'s.

**Instrument is I.O.U. or promissory note.**—See cases in Part II., Sect. 1, sub-sect. 1, & in Part XXV., Sect. 1, sub-sect. 3.

**2923. Validity of—Given for gaming.**

action brought to recover a sum of money lent of an I.O.U., & upon a bill filed to discover whether the money had not been lent for the purpose of gaming:—*Held*: defendant bound to state by his answer whether it was lent, it being still a question open to argument in a ct. of law, whether money lent at play, or for the of play, was recoverable in an action at law:—*Qu*: whether an I.O.U. was a security within Gaming Act, 1710 (c. 19). *WILKINSON v. WILKINSON*, 2 Y. & C. Ex. 303; 100 E. R. 437.

**2924.**—The ct. will not restrain a party from bringing an action at law upon an I.O.U., which was partly for money lent to play at games of cards, & partly for money lent to him at cards, not illegal in Germany. & at cards. *Jur.* 122, 1 Ph. 117; E. R. 587, L. C.

**2925. Effect of—Evidence of account**  
A party may state the amount of an I.O.U. stated. —*PAYNE v. J.*

**Whether evidence of money lent—Instrument not addressed to any one.**

12 Ad. & El. 641; 4 L. J. Q. B. 43; 113 E. R. 9

M. & W. 440  
L. T. O. 8, 138

**2927.**

of an account holder & party signing it, but not to him by the holder. —*ADOCK (1847)*, 16 M. & W. 449; 2 Pract. Cas. 128; 8 L. T. O. 8, 303; 153 E. R.

**PART XXI.**

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C. D. 610; 23 L. J. C. P. 137; 23 L. T. O. 8, 158;  
18 Jur. 581; 2 W. R. 421; 2 C. L. R. 818; 130

In order to support an account  
be an admission of a debt due.

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*Held*: the I.O.U. was not

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J. Ex. 350; 4 L. T. 3

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L. R. L. C. P. 297; Jur. N. 701.

**Whether  
creditor's debt—I.O.U.  
ruptcy.**—An I.O.U. be  
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—*HOLME*, No. 2

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**XXI. & XXII. [1.]**

production by plff. of an "I.O.U." signed by deft., but not addressed, is *prima facie* evidence that it was given to plff. by deft.; & if the latter wishes to rebut the inference arising from its production by plff., he should show that it has been in the hands of some other party.—*CURTIS v. RICKARDS* (1840), 1 Man. & G. 46; 1 Scott, N. R. 155; 9 L. J. C. P. 240; 4 Jur. 133 E. R. 241.

*Feld. Douglas v. Holme* (1840), 12 Ad. & El. 641; *Feld. Warwick v. Warwick* 34 T. L. R. 4.

**2934. — Equitable assignment of debt.**—Plff.'s wife, having lent S. £100 & taken from her I.O.U., afterwards asked S. to pay M. the £100 in due. S. agreed & plff.'s wife tore up the I.O.U., & S. gave M. a new I.O.U. for £100 to M. Plff.'s wife then died, & plff., of her estate, brought an S. & M. to recover the amount: *Held*: a good equitable assignment of the £100, sufficient consideration to support it, & the action failed.—*GERMAN v. YATES* (1915), 32 T. L. R. 52.

**Whether admissible in evidence—Without**

An I.O.U. is admissible evidence of a debt & a stamp. *FISHER v. LESLIE* (1795), 1 15, N. P.

*Held. Israel v. Israel* (1808), 1 Camp. c. *Rickards* (1840), 1 Man. & G. 46.

—.] A written acknowledgment of a debt, is good counts, without a stamp. *Israel v. Israel* (1808), 1 Camp. 499, N. P.

—.]—An acknowledgment of an account does not require a stamp. *Moss* (1823), 1 Bing. 1 L. J. C. P. S. C. P.

**How & when taken**

in the following form: "I borrowed that sum of you this day. To within 10 days," being offered in evidence on a trial, deft.'s counsel desired to see it, it was handed to him, it was laid before him, & afterwards, while counsel's attention was accidentally diverted, & before the paper was read to him, it was read in evidence. The court *Nisi Prius* held that counsel could not object to the want of a stamp, & plff.

Jury is not of the opinion that it is to be given for

III.

actual An I.O.U.

*Craw. & D. 122. — IR.*

having obtained a verdict, the ct. refused to grant a rule nisi for a new trial, on counsel's statement of the above facts.—*Foss v. WAGNER* (1834), 7 Ad. & El. 110, n.; 112 E. R. 414.

**2939. —**—.]—A paper signed by deft. was in the following form: "H. has advanced me £12, on furniture, etc., delivered to him at Stratford": *Held*: this did not require a stamp.—*HUXLEY v. O'CONNOR* (1837), 8 C. & P. 204.

**2940. — Instrument containing special terms.**—An I.O.U., which contains special terms, that the sum to be paid shall be reduced in a certain event, & that part of the sum shall be paid in a particular manner, will require an stamp, unless it relate to an amount under £20.—*EVANS v. PHILLIPOTS* (1810), 9 C. & P. 270, N. P.

**As to payment of interest.]**

An I.O.U. for £103 10s. with the following subscribed: "Lent for 6 months at 7½ per cent., this interest, £3 10s. is added to the amount," & with debtor's initials attached, requires no stamp.—*Marshall* (1850), 10 L. T. O. S.

, further, cases in Part II., Sect. 4, 1, ante, & in Part XXV., Sect. 1, sub-sect. 3,

**2942. —**—.]—In an action for board & lodging supplied to an illegitimate child of deft., letters of deft., containing promises to remit money to plff., & making excuses for not having done so:—*Held*: not to require an agreement stamp as being "evidence of a contract," within Stamp Act, 1815 (c. 184), Sched., Part I., tit. Agreement.

There is a great difference between a memorandum of agreement, on which an action may be maintained, & a document which merely amounts to an acknowledgment of the debt, & upon which the law will imply a promise to pay. That is the ground upon which an I.O.U. is admitted in evidence without a stamp, as being a mere acknowledgment of an antecedent debt, & not in

the contract between the parties. *ABINGER, C.B.*—*BEECHING v. WILKINSON* (1811), 8 M. & W. 411; 1 Dowl. N. S. 18; 10 L. J. Ex. 464; 151 E. R. 1099.

*Annotations: Held. Fancourt v. Thorne* (1846), 9 Q. B. 312; *Knight v. Barber* (1846), 16 M. & W. 66; *Marshall v. Powell* (1840), 1 New Pract. Cas. 590; *Toll v. Lee* (1849), 4 Exch. 230; *Clay v. Crofts* (1851), 17 L. T. O. S. 231.

Effect of absence or insufficiency of stamp on admissibility in evidence of negotiable instruments, see Part XXV., Sect. 4, sub-sect. 3,

—Without stamp—Deft. gave plff. his unstamped I.O.U.:—*Held*: the I.O.U. was a substantive instrument, & admissible without a stamp.—*MARKS* (1845), 3 *Craw. & D.* —IR.



## Part XXII.—Actions on and in Connection with Negotiable Instruments.

### SECT. I.—IN WHAT COURT.

#### XVIII.

##### COUNTY

1. Jurisdiction of High Court.—Whether affected by agreement to refer disputes to tribunal in Paris. —An agreement between a merchant in Paris & a merchant in London that the latter shall accept bills of exchange against the net proceeds of goods consigned to him for sale, & that all disputes relating to such bills shall be determined by a tribunal in Paris, does not deprive the English etc. of jurisdiction in respect of bills so drawn &

IN (1855), 1 W. R. 82.

2944. Jurisdiction of county court within jurisdiction Drawer & plaintiff outside jurisdiction. —Deft. accepted a bill of exchange for £12 at his residence within the jurisdiction of M. county ct., & delivered it to plff., the drawer, without the jurisdiction: *Held*: the cause of action arose within the jurisdiction of M. county ct.

ROFF v. MILLER (1850), Rob. L. & W. 349; 19 L. J. C. P. 278; 11 J. P. 309; 11 Jur. 710.

1 (1862), 12 L. T. 187; 31 L. T. 131.

2945. — Notice of dishonour within jurisdiction Ignorance of place of drawing & indorsement to enter a

order to material within the jurisdiction of a ct., it i honour was to deft. within the If deft. a within the jurisdiction the et., by the bill

#### XXII.

in by him to C., & the bills of C., so as to give the M. ct. v. HALL (1851), 1 & drew (C. & in by in A. in of in

HEATH v. M. & P. L. T. O. S. 142; sub HUTH v. L. J. Q. B. 325.

2946. — Bill drawn in jurisdiction - Accepted jurisdiction - Returned to & indorsed over by plaintiff resident in jurisdiction. — Plff., who resided at N., drew there a bill of exchange on deft., who resided at L. The bill at L. & sent it to plff. at N.

it over. The bill was dishonoured at maturity, & plff. paid the amount to the indorsee, & then by leave of the judge sued deft. on it in the N. county ct.:

*Held*: as deft. accepted the bill in L., the whole cause of action did not arise in N., & the judge of the N. county ct. had no jurisdiction to try the cause. WILDE v. SHERIDAN (1852), Saund. & M. 22; 21 L. J. Q. B. 200; 10 L. T. O. S. 120; 10 Jur. 420; sub nom. R. v. Birch, Hall Ct. Cas. 50.

1 (1862), 12 L. T. 187; 31 L. T. 131.

2947. — Payable outside jurisdiction County Courts Act, 1867 (c. 142). — Plffs. drew in N. a bill of exchange upon deft., which deft. & made payable in London. The bill arised plffs.

the judge w<sup>t</sup> the amount of the bill: *Held*: the cause of in to A

##### COUNTY COURTS.

2948. Jurisdiction of Mayor's Court, London Bill drawn, accepted, & indorsed in city of London to indorsee in Middlesex. — A bill of as drawn & accepted, & the put his name upon it, within the city of L., but it was delivered to the indorsee in the county

within city of BUCKLEY v.

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**2952. Jurisdiction of magistrate's court—Note payable to treasurer of friendly society.**—Under 5 & 6 Will. 4, c. 23, s. 8, no action is maintainable by the treasurer for the time being of a friendly society, upon a promissory note given him to secure a loan from the society, but his sole remedy is by proceeding before a magistrate, as therein directed.

I think the remedy upon these notes is confined to the summary proceeding before a magistrate; not that the jurisdiction of the superior ct. is taken away without express words, but that the statute creates an instrument of such a nature, that express words were necessary to enable the treasurer to sue upon it, & such words are not to be found (PATTERSON, J.). TIMMS v. WILLIAMS (1842), 3 Q. B. 413; 2 Gal. & Day, 621; 11 L. J. Q. B. 210; 6 J. P. 685; 6 Jur. 1012; 114 E. R. 505.

*Annotations:* **Reid**, Magnus v. Hall (1845), 8 J. P. 71; *Arg. Payne* (1849), 18 L. J. Q. B. 197.

## SECT. 2. SERVICE OF WRIT OUT OF JURISDICTION.

*See, generally, PRACTICE & PROCEDURE.*

**2953. Note made & delivered abroad—Payable in London.**—Action by payee against maker of a promissory note, payable at L. & Co., 4 months after date, made & delivered abroad, but duly presented in England: *Held*: the judge had properly made an order for plff. to proceed against deft. residing abroad under C. L. P. Act, 1852 (c. 76), s. 18. **FIFE v. ROUND** (1858), 20 L. T. O. S. 291; 6 W. R. 282.

*Annotations:* **Conrad**, Jackson v. Spittal (1876), L. R. 1 Q. B. 342; **Reid**, Althausen v. Margrejs (1868), 15 W. R. 594.

**2954. Bill drawn & indorsed abroad—By foreigner—Payable in London.**—Deft., a merchant resident in Norway, & not being a British subject, drew in Norway his bill of exchange at 4 months on E., in England, & after indorsing it to the order of D., sent it by post to D. in London, who indorsed it to

plff. in London:—*Held*: there was not a cause of action which arose in England, nor a breach of a contract made within it, & plff. could not sue deft. in England on the bill under C. L. P. Act, 1852, ss. 18, 19. **SICKEL v. BOND** (1861), 2 H. & C. 954; 33 L. J. Ex. 179; 9 L. T. 637; 10 Jur. N. S. 107; 12 W. R. 316; 130 E. R. 395; *sub nom.* **SICKEL v. BOND**, 3 New Rep. 438.

*Annotations:* **Conrad**, Horwood v. Wood (1864), 17 C. B. N. S. 749; **Approved**, Althausen v. Margrejs (1868), L. R. 1 Q. B. 340; **Conrad**, Durban v. Spence (1870), L. R. 6 Exch. 46; **Jackson v. Spittal** (1876), L. R. 1 Q. B. 342; **Cherry v. Thompson** (1872), L. R. 7 Q. B. 513; **Reid**, Cooke v. Gill, Union Bank of London, Garnishers (1873), 42 L. J. C. P. 98; **Horne v. Rouquette** (1875), 3 Q. B. D. 514.

**2955. Joint & several note signed abroad—By Englishman—Signed by co-maker in England—Delivered in England.**—Deft., an Englishman living at Florence, made & signed there, as one of the makers, a joint & several promissory note, & sent it thence by post to London to his brother, the other maker, who also signed it, & then handed it over to plff.'s bank, the payee:—*Held*: the cause of action arose in England, & deft. was rightly served with a writ of summons under C. L. P. Act, 1852, s. 18. **CHAPMAN v. COTTELL** (1865), 3 H. & C. 865; 6 New Rep. 237; 34 L. J. Ex. 186; 12 L. T. 706; 11 Jur. N. S. 530; 13 W. R. 813; 150 E. R. 774.

## SECT. 3. WHEN CAUSE OF ACTION ARISES.

**Necessity for presentment.**—*See* Part XII., Sect. 2, *ante*.

**Computation of time of payment.**—*See* Part V., *ante*.

**As regards instruments payable by instalments.**—*See* Part II., Sect. 1, sub sect. 4, *ante*.

**Within what time payment or satisfaction may be made.**—*See* Part XIV., Sect. 2, sub sect. 3.

**2956. Note made more than six years before action—Estate charged by maker with payment of debts.**—An action was brought against an exor.

of giving jurisdiction—**BRIDGES v. THORNTON**, 13 L. J. N. S. 37—**CAN.**

**Indorsement—Resident within jurisdiction—Hundi drawn & payable out of jurisdiction.**—A bill for recovery of the amount of a dishonoured hundi drawn at Sheknaud & payable at Furruckabad cannot be brought in the Ct. of the Munsif of Sheknaudpore, the obede of the indorse of the dishonoured hundi, but where none of the drawers or indorsers resided. **RAMCHANDRAN IYER v. IYERAKA DAS** (1871), 3 N. W. 343—**IND.**

**Note made out of jurisdiction—Defendant resident out of jurisdiction.**—The High Ct. has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally when deft. resides beyond the local limits, & such instrument was signed by him beyond those limits. **RAJENDRA HAT v. NEMA HAT** (1863), 1 Mad. 426—**IND.**

**Defendant served with process in jurisdiction.**—*Held*: actions upon promissory notes & accounts are transitory, & a deft. may be sued thereon irrespective of his domicile, provided he be personally served with process within the province where the suit is brought. **McKAY v. HARRIS** (1863), 3 Man. L. R. 41—**CAN.**

**An action upon a promissory note is transitory, & a deft. may be sued thereon irrespective of his domicile, & in such a case personal service of process, made upon deft. within the province where the suit is brought, is good service, though he resides out of such province.** **FIRST NATIONAL BANK v. CUNY** (1866), 16 W. L. P. 102—**CAN.**

**An action was brought in M. upon promissory notes made by deft. in a foreign country. The statement of claim was served upon deft. personally in M., but deft. did not reside in M.:—*Held*: the Ct. had jurisdiction.** **FIRST NATIONAL BANK v. CUNY** (1866), 16 W. L. R. 102—**CAN.**

**In action out of jurisdiction—Action to enforce judgment within jurisdiction.**—Deft. made three promissory notes to Manitoba, payable in that province. Plffs. brought action upon them in Manitoba & served deft. with the statement of claim in Saskatchewan. Deft. did not appear or submit to the jurisdiction of the Manitoba Ct., but suffered judgment by default. Plffs. subsequently brought action in Saskatchewan to enforce the Manitoba judgment or, in the alternative, on the notes:—*Held*: they could recover on the

notes. **BRITISH AMERICAN TRADING CO. v. FRANK** (1911), 10 W. L. R. 765; 4 Bank. L. R. 373—**CAN.**

## PART XXII. SECT. 2.

**Reasonable cause of action must be shown.**—On an application for the issue of a writ for service outside the jurisdiction, the promissory note as set out in the special indorsement showed the name of W., one of defts., and as indorser, indorsed under that of plff., the payee of the note. *Held*: prima facie evidence that W. was not liable on the note to plff., & that plff. was not the holder of the note, motion refused. **TAY YUEN v. BLUM** (1893), 3 H. C. R. 21—**CAN.**

**Note payable abroad.**—1811's cause of action was upon a promissory note made at Portland, C.W.A., by deft., who resided there; no place of payment was mentioned in the note. *Held*: prima facie the note was payable in Portland, & the contract & breach arose in the foreign jurisdiction, & the case was not within Order XI.—**CLARKE, GREEN & CO. v. HOLLADAY** (1883), 1 H. C. R. pl. 11 63—**CAN.**

## PART XXII. SECT. 3.

**2957. Note made more than six years before action—Subsequent debt against**

### 3.—When

a note more than six years after it had  
ven. Within a year of giving it, the maker by  
his will devised his estate, charged with his debts. :  
Held : though the debt on the note was barred at  
law, it was kept alive in equity by the charge on  
the estate.—*MORSE v. LANHAM* (1737), cited  
2 Ves. & B. 286 ; 85 E. R. 327.

*Hurke v. Jones* 2 Ves. & B.

**2957. Note to be delivered on happening of  
certain event.]**—A promissory note was deposited  
with a banker, to be delivered to the payee, on his  
producing a certain other note to be cancelled :—  
Held : the cause of action to the payee on the first  
note accrued on his receiving it from the banker &  
was not barred either by the lapse of six years  
from the date, or by the bkpy. & certificate of  
the maker between the date of the note & the time  
of its delivery to the payee. *r. ALDREN*  
2 Stark. 232, N. P.

**2958. Bill accepted after payee's death—After  
administration taken out.]** In an action by an  
upon a bill of exchange, payable to  
but  
Stat. Limitations began to run from the time of  
granting the letters of , & not from  
the time the bill became due, there no  
of action until there was a party capable of  
*MURRAY v. EAST INDIA CO.* (1821), 5 B. & Ald. 201 ;  
100 E. R. 1167.

*Conad. B. v. Oxford Fitzpayne* (1830), 9  
L. J. Q. 12 ; *Perry v. Jenkins* (1836), 1 My. & Cr.  
Cowper v. Godmond (1843), 9 Bing. 718 ;  
r. Smethurst (1848), 4 M. & W. 42 ; *Webster v.*  
*Kirk* (1852), 17 Q. B. 941 ; L. & H. 5  
Hoy v. Godman  
v. Kaye (1822), 3  
ree (1820), 7 L. J. Q. S. K. B.

*Ward v. Shaw*  
1835, 1 Y. &  
N. 108,  
Davidson v.

A. B. 630, *Carlewis v.*  
1 J. 11 439, *Sturges v.*  
r. Mid Wales Ry. Co.  
r. Credit Foncier of

W. 1 H. & N.  
Har & Ruth.  
1873, 1 R. 8 Q. B.  
02, 66 J. P. 861.  
[1916] 1 A. C.

### Note by husband & others to wife—Action by wife after death of husband against joint

A married woman being administratrix  
of money in that character, & lent  
husband, & took in return for it the joint

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several promissory note of her husband & two  
other persons, payable to her with interest :—  
Held : although she could not have maintained any  
action upon the note during the lifetime of her  
husband, he it

for a good consideration, it was a chose in  
action surviving to the wife, & she might  
an action upon it against either of the other  
makers at any time within six years after the death  
of her husband.—*RICHARDS v. RICHARDS* (1831),  
2 B. & Ad. 447 ; 9 L. J. O. S. K. B. 319 ;  
E. R. 1208.

2 B. & Ad. 52  
12 M. & W. 85  
r. Smith (1858), E. B. & E. 442.  
6 M. & W. 423 ; *Hart v.*

1 B. 861 ; r. Perrins L. R. 4 Q. B. 500.

### 2960. Cheque—Not given for pre-existing debt.]

Plff., in pursuance of an agreement to  
money to debt., sent debt. a cheque on June 11,  
by debt. on the following  
day, & presented for payment & paid on June 21.  
On June 21, 1867, an action was commenced to  
recover the amount of the cheque, & Stat. Limita-  
tions pleaded :—Held : the cheque not having been  
given in payment of any pre-existing debt, the  
of action did not arise till it was actually  
paid, & the action was not barred by the

r. BRUCE (1868), L. R. 3 C. P. 300 ;  
37 L. J. C. P. 112 ; 17 L. T. 545 ; 16 W. R.

*Mentd. Re* Francis v. Bruce  
L. T.

**2961. Bill paid by accommodation acceptor—  
Action by such acceptor against drawer.]**—Upon a  
contract to indemnify an accommodation acceptor,  
Stat. Limitations begins to run from the time at  
which plff. is damaged by actual payment.  
*REYNOLDS v. DOYLE* (1840), 1 Man. & G. 753 ;  
*Drinkwater*, 1 ; 2 Scott, N. R. 45 ; 4 Jur.  
133 E. R. 536.

4 H. & N.

]—A. was the accommodation  
for B. of a bill of exchange, which became  
in 1856. A. was sued upon it, & paid the  
amount within six years of his suing B. for same,  
who pleaded Stat. Limitations :—Held : the Act  
commenced to run against A. only from the time  
of payment by him, & he was entitled to recover.  
*E. v. TIPPETT* (1865), 11 L. T. 708.

r. THOMAS (1895),  
N. Z. L. R. N.Z.

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A.  
of a pro-  
it to plff. The  
M.  
promissory

or  
the  
plff.  
to  
A  
date  
by  
r. AR.

Held : the  
to run



1863. Bill paid  
dishonour—After

to

to pttf.  
it

K.'s debt to the co., debt. should draw  
three bills of exchange, payable to pttf.,  
pttf. should indorse the bills to the co.  
The bills became due in 1843, & were dishonoured.  
In 1847 the banking co. sued pttf. on the bills,  
& pttf., in 1851, paid the amount:—H  
ed by Stat. Limitations from  
drawer of the bills.—WERNER v. KIRK  
17 Q. B. 944; 21 L. J. Q. B. 159; 19 L. T. O. S.  
46; 16 Jur. 217; 117 E. R.

Statute of Limitations generally, see  
OF A

### Holder retaining bill as security from custody on execution.

The of a dishonoured bill  
actions &  
On Mar. 3 he

On Mar. 21, the indorser paid to the  
the amount of the bill. The bill was kept  
by the holder till his costs were paid on Apr. 13,  
when he handed it to the indorser, who tr  
it to pttf. On Mar. 20 the holder had  
the acceptor in execution on his judgment, but  
on

custody. right of action of the

amount of bill on the 21st,  
& the holder had after that day only a lien on the  
bill for his costs, & could not by his voluntary  
in discharging the acceptor from

L. J.

R. & Q. B. 55; 9  
T. 337; 17 W.  
XIV.,

money due under a promissory  
issue of the writ a statutory mor  
suspended pttf.'s remedy, but  
trial of the action the morato  
Held: pttf.  
amount claimed. v. PARRY  
T. L. R. 40; 59 Nol. Jo.

That action after bill  
in an action a bill of  
by against acceptor that  
bill was made on Mar. 4 months  
, "which period has now  
the declaration was sufficient, & it not  
the commencement of  
(1830), 2 M. & W. 91; 5 Bowd. 324  
208; 6 L. J. Ex. 13; 150 E. R. 682.

v. Jennings (1866), L. R. 1  
v. Shepherd (1843), L. R. 1  
v. Newton (1851), 1 Jur. 381  
Dacre (1844), 12 M. & W. 431;  
T. O. S. 145; Barnes v.

### Onus of proof—That cause of

—In an action against indorser of a bill  
re, issue was joined as to notice of dis-  
honour. It appeared that a letter containing the  
was put into the post on the day on which  
action was commenced, & by the routine of  
the post office, would reach debt. between four &  
in the afternoon of that day. No further  
was given as to the time of notice. The  
of the ct. were open only till five in the  
of the day in question: Held: pttf.

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1870, 4 V. L. R.

1870, 4 V. L. R.

indorse bill

v. HINDS LAL

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WOOD v.  
L. C. R. 527. CAN.

OF CANADA  
39, 11 ALA. L. R. 24.

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sects. 1 & 2. Sect. 6; Sub-sect. 1.

must fail, it lying on him to show that the right of action was complete before the suit was commenced. — *CANTRIQUE v. BERNARD* (1844), 6 Q. B. 498; 1 New Pract. Cas. 94; 14 L. J. Q. B. 3; 9 Jur. 130; 115 E. R. 186.

*v. Duff* (1862), 11 C. B. N. S.

, further, Part XII., Sect. 3, sub-sect. 2.

## **SECT. 1. — CONDITIONS PRECEDENT TO ACTION.**

Part XII., Sect. 2, *ante*.

## **SECT. 5. — WHO MAY SUE.**

Part X., Sect. 4, & Part XI.,

2.

BOTH

Acceptor holder at or after maturity.] See XIV.,

**General rule.**—Where 1  
exor., & defts. pleaded that the promises in the  
declaration were made jointly with plff.: *Held*:  
in bar of the action. — *MOFFATT v.*  
*(1787)*, 2 Chit. 530; 2 Bos. & P.  
R. 1193.

*Fidd.* Mainwaring v. Newman (1800), 3  
P. 120. *Apud.* Fitzgerald v. Boehm (1  
P. 332. *Reid.* Hammond v. Tenger  
P. 474; Beecham v. Smith (1858), 27 L.

**One indorsee partner with indorser—  
Action against indorsers.**—*Assumpsit* by A.,  
B., & C. against D. as one of the indorsers of a  
promissory note drawn by E. in favour of C., D.,  
& E. then in partnership, & by them indorsed to  
A., B., & C.: *Held*: a plea in bar, that C., one  
of plffs., was liable as an indorser, together with  
D., was good. *MAINWARING v. NEWMAN*  
2 Bos. & P. 120; 120 E. R. 1190.

*Assumpsit.* *Fidd.* Foster, Hight v. Ward (1883), 13 Q. B. 188.  
*Consl.* Boyce v. Edbrooke, (1903) 1 Ch. 529.  
8 Ves. 340. E

2970.

a firm

a bill of exchange against defts., the  
indorsers, where one member of plffs.  
firm was of the indorsers:—*Held*:  
not, in the circumst  
*FOSTER, HIGHT & Co. v.*  
El. 168.

XI., Sect. 4.

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**2971. Maker partner with payee—Action by partnership.**—In an action by A., the payee of a promissory note, against B., the maker, it is no defence that the note was given as security for a loan made to B. out of the funds of a co-partnership, of which A. & B. are members, & A. the treasurer & trustee, & that A. sues on behalf of the co-partnership. — *LOMAS v. BRADSHAW* (1850), 9 C. B. 620; 19 L. J. C. P. 273; 15 L. T. O. S. 113; 137 E. R. 1034.

**2972. Bill drawn by shareholder—Accepted by secretary for directors—Action against directors.**—Plff., a shareholder in a joint stock co., drew two bills of exchange on the directors for goods supplied for the use of the co., which bills were accepted by the secretary "per pro" of the directors. On proof that the secretary had directions to accept bills drawn by plff.'s brother:—*Held*: plff. could not recover as against the directors, on the ground, that the secretary had no authority to accept the bills drawn by plff., & as he was a shareholder, he must be considered as a partner in the concern, & as such could not sue his co-partners. — *NEALE v. TURTON* (1827), 4 Bing. 149; 12 Moore, C. P. 365; 5 L. J. O. S. C. P. 133; 130 E. R. 725.

*Reid.* Boyce v. Edbrooke, (1903) 1 Ch. 536;  
*v. Kerr*, (1910) 1 Ch. 529. *Mentl.* Beecham v.  
(1858), E. B. & E. 442.

**2973. — Indorsed to another shareholder—  
Action by indorsee against drawer.**—A member of a joint stock co. was employed by the co. as their agent to sell goods for them, & received a commission of 2 per cent. for his trouble, & 1 per cent. *del credere* for guaranteeing the purchaser. Having sold goods on account of the co., he drew on the purchaser a bill of exchange, payable to his, the drawer's, own order, & after it had been accepted he indorsed it to the actuary of the co., & the latter indorsed it to another member, who the managing director, & who purchased s for the co., the co. being then indebted to him in a larger amount than the sum mentioned in the bill. The acceptor having become insolvent before the bill became due, the drawer received from him 10s. in the pound upon the amount of the bill by way of composition:—*Held*: the indorsee being a member of the co. could not sue the drawer on the bill, inasmuch as it was drawn by the latter on account of the co., & he could not recover the sum received by the drawer on the bill, because that money must be taken to have been received by him in his character of a of the co., & not on his own account. — *HUBBARD* (1828), 8 B. & C. 345; Dan. & Ll. 118; 2 Man. & Ry. K. B. 309; 6 L. J. O. S. K. B. 320; 108 E. R. 1071.

27 L. J. Q. B.

**2974. Note made by directors—Payee holder of scrip—Not qualified proprietor.**—By a deed of May 7, 1839, a co. was formed, called the W. association, of which defts. were directors. All bills & notes were to be drawn & accepted by three l., by an agreement, agreed to



to the co. 1,000 shares in the P. mining co., to be paid for by the sum of £1,385, & by the delivery to him of 200 scrip certificates of shares in the W. association. The money was to be paid on Aug. 1, 1841. The scrip certificates were thereupon delivered by the co. to plff., & entered in their books in his name. Defta. afterwards gave plff. the following promissory note: "We jointly promise to pay to P., plff., £1,385 on Aug. 1, 1841, for value received in P. shares, pursuant to annexed contract." The note was signed by all defts. The deed of settlement provided, that holders of scrip certificates should not be considered proprietors, & that a certain proportion of net profits of the year should be divided among the shareholders & scrip certificate holders in proportion to their several shares & interests. Plff. had not paid any instalments nor signed the deed of settlement. In an action by plff. against defts. on the promissory note:—*Held*: a plea, that defts. made the note as directors & on behalf of the mining co-partnership, & that plff. was a partner with defts., was not supported by proof of the above facts. *FOX v. FURTH* (1842), 10 M. & W. 131; Car. & M. 502; 11 L. J. Ex. 330; 152 E. R. 131.

**2975. Co-executor suing as indorsee—Liable as accommodation drawer.**—Bills of exchange were accepted by A., for the accommodation of B., who, being one of the execs. of C., & having considerable sums of money in his hands belonging to C.'s estate, which were deposited in a box in B.'s possession, discounted such bills with the money belonging to C.'s estate, by taking out of the box the receipt for the discount, & at the same time the box:—*Held*: B. is liable as indorsee of an accommodation holder of bills, & his liability extends to him & his assigns.

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**2976. One payee also joint maker—Action by payees against makers—Contribution between joint makers.**—Action by plffs., as payees of a promissory note, against defts., as makers, for the amount of the note.

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PART XXII SECT. 5, SUB-SECT.

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1 W. W. R. 667 CAN.

PART XXII SECT. 6, SUB-SECT.

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of writ—In respect  
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Act, 1851 (c. 43),  
to causes of action on foot

*T. MURPHY* (1861), 12 L. C. J. R. 547.  
14 Ir. Jur. 60.

Summary

(1862), 14 Ir.

2977  
sumat.  
—A bill

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Man. R. 244.—CAN.

Act,

in the plea, & that R. in the note mentioned as one of the payees thereof & as one of the makers thereof, was plff., R., & the note at the time it was made was one, upon & by virtue whereof deft. in case he paid same, or more than one third part, would be upon

to in of  
R., third  
him, deft.;

E. R. & E. 442; 27 L. J. Q. B. 257; 31 L. T. O. R. 176; 4 Jur. N. S. 1018; 6 W. R. 627; 120 E. R. 574.

SECT. SUMMARY JUDGMENT.

1. or

on

1855 Act. As regards Court 14, which

A. Issue of and Procedure under Writ of S

**2977. Issue of writ—In respect of what instruments—Note payable on demand.**—A promissory note payable on demand is within 1855

*v. MURPHY* (1860), 5 H. & N. 813  
29 L. J. Ex. 377; 2 L. T. 302; 157 E. R. 1405.

**2978.** or on

Act  
on  
5 H. & N. 400; 29 L. J. Ex. T. 253;  
6 Jur. N. S. 512; 8 W. R. 450; 157 E. R.

**2979.** Within what time—How six months calculated—Note payable on 6 months within which after a note, demand, is due, a writ may be issued

(1860), 5 H. & N. 813; 29 L. J. Ex. 377; 2 L. T. 302; R.

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MURPHY (1860), 5 H. & N. 813; 29 L. J. Ex. 377; 2 L. T. 302; 157 E. R. 1405.

Man. R. 244.—CAN.

*Sect. 0. — Summary judgment: Sub-sect. 1, A.]*

**2980. — Out of district registry—Application for leave to defend—Neither party resident in district.]—**A writ under 1855 Act may issue out of a district registry, A, in that case, notwithstanding neither party resides nor carries on business within the district, the notice may require deft. to apply for leave to appear, & to appear in the district registry without suggesting that he may obtain leave to appear in London.

Where deft. is served with a writ issued out of a district registry within the jurisdiction of which he neither resides nor carries on business he may obtain an order of the ct. or a judge to have the subsequent proceedings taken in London. *OGBURN v. BRADSHAW* (1876), 1 C. P. D. 331; 15 L. J. Q. B. 273; 31 L. T. 578; 40 J. P. 327; 21 W. R. 101; 2 Char. Pr. Cas. 132.

*Annotations: Mordaunt v. Norris & Beazley* (1877), 46 L. J. Q. B. 169; *Smith v. Richardson* (1878), 1 C. P. D. 112.

**2981. Application to set aside—Within what time competent.]—**An application to set aside a writ of summons, issued under 1855 Act, for irregularity is not too late, if made within the time limited for obtaining an order to appear. *HALL v. COATES* (1855), 11 Exch. 480; 25 L. J. Ex. 3; 1 Jur. N. S. 1113; 156 E. R. 920.

**2982. Amendment—Maker's name omitted.]—**The omission of the name of the maker of the note, in the indorsement of a writ under 1855 Act, is an irregularity, but the ct. will, upon a motion to set aside the copy & service, allow the writ & copy to be amended, under C. L. P. Act, 1852 (c. 76), s. 20, on payment of costs. *KNIGHT v. POOCK* (1855), 17 C. B. 177; 25 L. J. C. P. 31; 26 L. T. O. S. 61; 1 Jur. N. S. 1022; 1 W. R. 10; 139 E. R. 1037.

*Annotation: Mordaunt v. Leigh v. Baker* (1856), 2 C. B. N. S. 367.

**2983. — Writ issued out of time.]—**A writ issued under 1855 Act, in a case which is not within the Act, the bill or note having become due & payable more than 6 months before, may, by virtue of C. L. P. Act, 1852, s. 222, be amended, by turning it into a writ under the last mentioned Act.

**29811 Application to set aside—Instrument not a bill of exchange.]—**Deft. moved to set aside a writ of summons on the ground of irregularity, the action having been brought under Summary Procedure on Bills of Exchange Act, 1861, whereas the document which was the subject matter of the action was not a bill of exchange. The document was as follows:—“(Place & date) on demand I promise to pay G. on her order the sum of £75 on her giving up possession of the room which she now occupies.” *Held: plff. should have leave to amend the writ by striking out the notice under 21 & 23 Act c. 43. QUARLEY v. DWYER* (1887), 16 L. L. T. Jo. 100. —IR.

**Leave to sign final judgment—After leave to defend granted.]—**Where a deft. has obtained leave to appear & defend under Summary Procedure on Bills of Exchange Act, plff. cannot proceed under Ord. XIII, r. 1, in order to obtain leave to sign final judgment as if the writ were a writ specially indorsed under Ord. II, r. 2. *KIRWAN v. ROOPE* (1878), 11 L. L. T. 51. —IR.

**29821. Amendment—Writ issued in wrong name.]—**In an action under

Summary Bills of Exchange Act, 1861, plff. sued by the surname of “Ferryhaugh,” instead of “Ferryhaugh,” his true surname; no application was made by deft. to defend, & no notice objecting to the error was served. —*Held: plff. might amend & enter judgment. FERRYHAUGH v. FARWELL* (1873), 1 L. R. 9 C. L. 432. —IR.

**29831. — Writ issued out of time.]—**In an action under Summary Procedure on Bills of Exchange Act, 1861, it appeared that the bill of exchange on which the action was brought was over 6 months due. A motion for liberty to amend the writ already served by striking out the notice indorsed on it was granted without prejudice to the service already had, this order to be served in like manner. —*HARRIS v. BROWNE* (1873), 7 L. L. T. Jo. 489. —IR.

**Irregularity—No address for service of plaintiff indorsed on writ.]—***LAUREN v. SCHULTZ*, [1913] V. L. R. 374. —AUS.

**Plaintiff described as “holder” —Without specifying whether “payee, indorser, or bearer.”]—***LAUREN v. SCHULTZ*, [1913] V. L. R. 374. —AUS.

Deft. was, in May, 1856, served with a writ of summons under 1855 Act for the recovery of principal & interest on a promissory note alleged to have been made by her testator in Mar., 1851, payable on demand. No appearance having been entered, judgment was signed, & execution issued. Nine months afterwards, deft. moved to set aside the writ & subsequent proceedings, on the ground that they were *coram non judice* & void, & also suggesting that testator's signature to the note was a forgery. The ct. refused to set aside the writ, but allowed it to be amended, upon terms, by making it a specially indorsed writ under C. L. P. Act, 1852, s. 25. —*LEIGH v. BAKER* (1857), 2 C. B. N. S. 367; 26 L. J. C. P. 220; 29 L. T. O. S. 111; 3 Jur. N. S. 608; 5 W. R. 877; 140 E. R. 459.

*Annotations: Conad. McStephens v. Hartley* (1869), 20 L. T. 225. *Reid. Maltby v. Murrells* (1860), 6 H. & N. 813.

**2984. — Adding claim for costs—Filling up blank.]—**The form of indorsement prescribed by 1855 Act may be altered, by inserting a claim for costs, & the blank before “days” may be filled up with “four.” —*ROBINSON v. COTTERELL* (1855), 11 Exch. 476; 25 L. J. Ex. 3; 26 L. T. O. S. 137; 1 Jur. N. S. 1113; 4 W. R. 127; 156 E. R. 918.

**2985. S. P. HALL v. COATES** (1855), 11 Exch. 480; 25 L. J. Ex. 3; 26 L. T. O. S. 137; 1 Jur. N. S. 1113; 156 E. R. 920.

**2986. Irregularity—Waiver by conduct of defendant.]—**A writ issued under 1855 Act, more than 6 months after the date of a promissory note, payable on demand, though irregular, is not void, & the irregularity may be waived by the conduct of deft.

Where plff. having served deft. with a writ under 1855 Act, more than 6 months after the date of a promissory note payable on demand, & having signed judgment & issued execution, deft. requested him to instruct the sheriff to withdraw, after a levy of part of the judgment debt, plff. also holding a mtge. security, & authorised the sheriff to re-enter at any time & levy the remainder of the debt: *Held: deft. had precluded himself*

*k. — Plaintiff not averring that action brought within six months.]—*It is no ground of demurrer to an action under Summary Procedure on Bills of Exchange (Ireland) Act, 1861, that the plaintiff does not aver that the cause of action arose within 6 months before action brought. —*DEVEREUX v. MORRISSEY* (1865), 17 L. C. L. R. 785. —IR.

**29861. — Waiver by conduct of defendant.]—**A deft. appearing to a writ of summons waives his right to have the writ set aside for irregularity. —*ALLEN v. QUIGLEY* (1876), 17 L. L. T. 46. —IR.

**298611. — Waiver by conduct of deft.'s solicitor—Acceptance of service & undertaking to appear.]—**A writ under the summary procedure provided by Instruments Act, 1890, (No. 1193), was served on deft.'s solr., who indorsed & signed on the original the following memorandum:—“I accept service of the within writ on behalf of deft., & undertake to enter appearance in due course.” Deft., having obtained leave to enter an appearance under protest, then moved to set aside the writ. —*Held: the acceptance of service & the undertaking by deft.'s*



# PART XXII.—ACTIONS ON AND IN CONNECTION WITH NEGOTIABLE

from applying to set aside the writ, judgment, & execution, & the official assignee his bkprcy. was in the same situation. **ALTON**  
**MURRELLS** (1800), 5 H. & N. 813; 21 377; 2 L. T. 302; 157 E. R.

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(1858), 8 E. & B. 940; 27 L. J. Q. B. 183;  
 .. T. O. S. 280; 4 Jur. N. S. 508; 6 W. R.  
 ; 120 E. R. 353.

Harris v

**2988. — Affidavit of personal**  
**on partner of firm sued.** The effect of Jud.  
 Act, 1875 (c. 77), Sched. Ord. 11, r. 0, is that in  
 actions under 1855 Act, the procedure provided  
 by s. 1 of the Act must be strictly observed, &  
 a sign final judgment in default of  
 without filing an affidavit of "personal  
 He cannot for that purpose avail  
 t. r. 0, nor can he obtain an  
 er Ord. 9, r

L. J. Q. B. 100; 34 L. T. 300; 24 W. R. 320.

W. 1875, 24, 1, 10

**Defences available—Whether limited to** W. R.

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 120 E. R. 820.

L. J. Q. B. 37;  
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**County court—Order to issue summons.**

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**Costs—Several bills**

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 W. 1875, 24, 1, 10  
 L. R. 1191; V. L. R. 374 **IR.**

*Summary judgment: Sub-sect. 1, B.; 2, A*

**2992. How application made—Ex parte.]—**The s. 2, for leave to defend an *ex p.* application; but if the judge is dissatisfied with the affidavit, he will only grant an order nisi in the first instance. *FITCH v. GLOVER* (1855), 26 L. T. O. S. 59.

**2993. — Sufficiency of affidavit.]—**Under 1855 Act the affidavit for leave to appear & defend need not disclose the defence with the certainty in a plea, but it is enough if it discloses for supposing that

by the affidavit that the bill had been accepted for the co., of which deft. was manager, & the of which had since been transferred to co., who had agreed to pay pltf. for the coals, that pltf. had re-invoiced the coals to co., & had told deft. that they would pay, & that he should look to them, & not to deft., for payment, the ct. thought it sufficient, & allowed deft. to it being reasonably probable upon the facts be a defence the ground of exoneration from the or of acceptance of the of third parties, although an with pltf. was not definitely stated, but only evidence of it. *CLAY v. TURLEY* (1857), 27 L. J.

**2994. — To** with a writ under 1855 Act, to leave to appear & defend, it is not necessary that he should produce affidavit of merits. It is enough if the, whether legal or e

*CASELLA v. DARTON* (1873), L. R. 8 C. P. 100; 42 L. J. C. P. 58.

**When leave granted—Reasonable supposition of defence.]—**Under 1855 Act deft. will be allowed to appear & defend, where there is any defence suggested, either in law or in fact, which there is any reasonable ground for supposing may

Where a bill was directed to a firm of A. & Co., was accepted in the name of A. & B., although acceptance was not denied to be in the handwriting of B., deft., & he had represented to pltf., the drawer, that he was in partnership with A. & had asked for time after the bill was due, he was allowed to defend the action. *MATHEWS v. MARSLAND* (1858), 27 L. J. Ex. 148; *sub nom.* *MATTHEWS v. MARSLAND*, 30 L. T. O. S. 277; 6 W. R.

**2996. — Apparently real defence.]—**In an commenced by writ of summons under Act, leave to appear & plead will be given whenever there is an apparently real defence, & the condition of bringing the money into ct., or security, will only be imposed where there reason to doubt its *bona fides*.

Where, in an action by an indorsee, leave has n given on affidavits showing a good defence n the original parties to the bill, & stating which raise the inference that pltf. is not a holder for value, or is for any other reason liable to be opposed by the same defence, affidavits in answer will be received to contradict that inference, & will, if clear & cogent, be ground for rescinding the leave. *AGRA & MASTERMAN'S BANK v. LEIGHTON* (1866), L. R. 2 Exch. 56; 4 H. & C. 656; 36 L. J. Ex. 33.

*J. Glyn v. (1879), 13 Ch. D. 171.*  
*Held. Thornton v. Maynard* (1879), L. R. 10 C. P. 695;  
2, 47 J. P. 57  
El. 83. *Banks v.* K.

**PART XXII. SECT. 6, SUB-SECT. 1.**

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BRYDON CAN. 2 Man. L. R. 117.—  
1.)—Pltf. received a bill of in respect of a sum recovered in an action. Deft. alleged was the real debtor, that i, & that he signed the bill not knowing what it was:—*Held*: It was impossible to arrive at the truth of the matter from the affidavits, & liberty was given to defend, deft. to plead at once & take short notice of trial.—*O'HANLON v. HOBY* (1873), 7 L. L. T.  
**2995 III. —**  
—In an action under Summary Pro- on Bills of Exchange Act,  
not  
L. T. Jo. 420.—IR.  
of Exchange Act, the ct. will affidavit, extend the which  
(1873), L. R. 8 C. L. 534;  
43.—IR.  
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43.—IR.  
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action or Bills in Act. n to Where  
L. T. Jo. 420.—IR.



**When**  
**Leave obtained**  
 obtained leave to appear & defend an action brought under 1855 Act the ct. will interfere to set aside such order, if obtained fraudulently. — *POLLACK v. TURNOCK* (1857), 1 H. & N. 741; 28 L. T. O. S. 294; 3 Jur. N. S. 92; 156 E. R. 1399.

**2998. — Affidavits contradicting**  
**Bona fide conflict of testimony raised.**  
 an has been made, allowing debt., sued under Act, to appear & defend, it will not rescinded on affidavits contradicting the by other affidavits on the part of

*C. THOMAS* (1858), 1 F. & F. 377.

**2999. — Alleging breach of good faith.**  
 — Where debt., sued under 1855 Act, has obtained leave from a judge to appear to the writ & to defend the action, the ct. will not set aside the order upon affidavits which, in substance, merely amount to a denial of the matter set up by way of defence, or affirmatively a that which def

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**3001. What indorsement should show — Sufficient to inform defendant what claim consists of.**

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it follows: "Pltfa. claim share or contribution to the payment of bills of exchange & promissory notes on he & pltfa. were jointly liable, & which bills & notes have been taken up by the indorsement did not indorsement under R. S. C., which under r. 14, r. 1, HICKS (1877), 3 Q. B. D. 47 J. Q. B. 27; 37 L. T. 529; 26 W. R. 113. (1879), 5 C. P. D. Q. B. D. 1. Held. 1 L. T. 178.

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L. T. 167; 5 R. 147, D. C.

**3003. Notice of dishonour**  
 To for writ indorsed  
 er R. S. C., Ord. 14, r. with a claim for the of

of dishonour  
 C. (1892), 61 L. J. 717 T. 1  
 T. L. R. 744, D. C.

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Indorsement

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with the exception that it did not state that notice of dishonour had been given to the drawer. After taking out a summons for judgment under Ord. 14, *plff.*, without leave, amended the indorsement by adding a statement that notice of dishonour had been given. An order was subsequently made leave to enter judgment:—*Held*: there is a good special indorsement at the time of adjudication on the summons, the order was rightly made.—**ROBERTS v. PLANT**, [1895] 1 Q. B. 597; 64 L. J. Q. B. 347; 72 L. T. 181; 43 W. R. 308; 14 R. 222, C. A.

Q. B. 352, *Hopley v. Tarvin Parish*  
74 J. P. 209.

**3005. What indorsement may claim.—Interest recoverable as damages.**—Where judgment was signed under C. L. P. Act, 1852 (c. 76), s. 25, on a writ specially indorsed, interest on an *L.O.C.*, the *et.* the judgment on the ground that *deft.* by not appearing to the writ, had admitted a c

not limit specially indorsing a writ  
th interest to cases where there has  
an express or implied contract

yet in all cases, except bills of exchange & promissory notes, if any party not entitled to interest makes a claim for it by special indorsement to gain an improper advantage, the *et.* will set aside the judgment & compel the attorney making such indorsement to pay the costs.—**RODWAY v. LUCAS** (1855), 10 Exch. 667; 24 L. J. Ex. 155; 24 L. T. O. S. 262, 277; 1 Jur. N. S. 311, 429; 3 W. R. 212; 3 C. L. R. 615; 156 E. R. 607.

*Annotations*: **Follid.** *Ryley v. Sheba*  
74 **Reid.** *c.*

**3006. — Interest to date of payment or judgment.**—In an action on a dishonoured bill of exchange or promissory note, the writ may, under 1882 Act, s. 57, be specially indorse R. S. C., Ord. 3, r. 6, with a claim for i until payment or judgment, interest under that sect. being deemed to be liquidated damages, & nt under Ord. 14 may be signed on a writ

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1 Q. B.

L. J. Q. B. 225; 66  
38 Sol. Jo. 361, D. C.

798; 40 W. R. 411

**Reid.** *Gerrard v. Clowes* (1892), 67 L. T. 264.

**3007.**

**Not at abnormal**

holder

a specially indorsed writ by  
acceptor of a bill of exchange,  
after date, the particulars

as follows: "Principal £22 2s. 6d., interest to date of writ £3 7s. 6d.—£25 10s. *Plff.* also claims interest on £22 2s. 6d. at 25 per cent. *per annum* till payment or judgment." The judge at chambers amended the writ by striking out the claim for interest at 25 per cent. & allowed *plff.* to sign final judgment for £25 10s. under Ord. 14, r. 1. *Deft.* objected that the writ, as claiming interest without alleging any agreement for it, was not specially indorsed when he appeared to it, & that the amendment of the judge did not make it specially indorsed *ab initio*:—*Held*: the writ was not specially indorsed, & there was no power to give leave to enter final judgment under Ord. 14, r. 1.

It was quite consistent with this writ that *plff.* was claiming this high rate of interest in respect of a bill which gave him no such right (**MATHEW, J.**).  
— **ELLIOTT v. ROBERTS** (1891), 36 Sol. Jo. 92, D. C.

*Annotations*: **Distd.** *Blood v. Robinson* (1892), 36 Sol. Jo. 203. **Consd.** *Lawrence v. Willcocks*, [1892] 1 Q. B. 696; *n & Universal Bank v. Clancarty*, [1892] 1 Q. B. **Reid.** *Ryley v. Master, Sheba Gold Mining Co. v. Trubshawe*, [1892] 1 Q. B. 674.

**3008. — — — — — ]—A claim on a bill of**  
under R. S. C., Ord. 3, r. 6, & for money  
& interest up to judgment is a good special  
ment, but interest must not be at abnormal  
**BLOOD v. ROBINSON** (1892), 36 Sol. Jo.  
203, D. C.

*Annotations*: **Consd.** *Lawrence v. Willcocks*, [1892] 1 Q. B. 696; *London & Universal Bank v. Clancarty*, [1892] 1 Q. B. 689. **Reid.** *Ryley v. Master, Sheba Gold Mining Co. v. Trubshawe*, [1892] 1 Q. B. 674.

**3009. — Expenses of noting.**—In an action on a bill of exchange, the writ was specially indorsed for £31 8s. 9d., being balance of principal, interest, & expenses of noting, due on a bill of for £75 9s. dated, etc.:—*Held*: the of noting were not "a liquidated demand" within C. L. P. Act, 1852 (c. 76), s. 27,

upon  
in excess of  
which could possibly be due except by  
of some special contract, which  
not alleged:—*Held*:  
was bad & no  
permitted.—**LARKSON v.**  
17 P. R. 92, 206.—**CAN.**

**1. — Expenses of noting.**—  
An indorsement for protest charges on  
draft:—*Held*: a bad  
**SINCLAIR v.**  
P. R. 270.—**CAN.**

**3006 II. — — — — — ]—Del**  
to set aside a specially indorsed writ  
amount of a bill  
*plff.* claiming  
in the ordinary way by de-

in form. **COWAN CO. v. DEAN**, 21  
C. L. T. 321.—**CAN.**

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failure of deft. to enter an appearance within  
the specified time.—*ROGERS v. HUNT* (1854), 10  
Exch. 474; 24 L. J. Ex. 23; 24 L. T. O. S. 134;  
3 W. R. 72; 18 Jur. 1084; 3 C. L. R. 174;  
E. R. 525.

*Annotation*—*Dodd, Rodway v. Lucas* 10  
687.

3010. —

an item for "bank draft returned," which  
on the debit & credit side of the  
, & it further contained a sum for  
"notary charges on same";—*Held*: a sufficient  
indorsement under R. S. C., 1875, Ord. 3, r. 6,  
to entitle plff. to sign judgment under Ord. 14,  
r. 1.—*SMITH v. WILSON* (1879), 5 C. P. D. 25;  
49 L. J. Q. B. 96; 41 L. T. 433; 28 W. R. 57,  
C. A.

*Bickers & Speight* (1882), 72 Q. B. D. 7.  
12 Act, s. 57 (1) (c).

3011. — In an action on a dis-  
honoured bill of exchange the writ may be specially  
under R. S. C., Ord. 3, r. 6, with the  
of

Ord. 14 on a writ so  
& *SONS v. WILCOCKS*, [ ] 1 Q. B.  
L. J. Q. B. 319; T. 311; 40 W. R. 410  
S. T. L. R. 181; 3

"Bank

on a bill of exchange the writ was  
for the amount of the bill, & a further sum  
as "bank charges." Deft. failed to appear, &  
judgment was entered under R. S. C., Ord. 13,  
r. 3: *Held*: this was a liquidated demand  
within Ord. 13, r. 3, expenses of noting, sufficiently

by  
(1893) 1 Q. B. 318; 62 L. J. Q. B. 339; 68 L. T.  
90; 41 W. R. 285; 37 Sol. Jo. 195; 5 R. 183,  
D. C.

of damages generally, see Part XIII.

B.

How of  
affidavit — Notice of  
under R. S. C., Ord. 14, r. 1, for  
judgment upon a writ  
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XXII. SECT. 6.

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*CHUDLEY*, [1894] 1 Q. B. 451;  
L. J. Q. B. 355; 38 Sol. Jo. 82; 10 R. 423, D. C.  
*Annotations*—*Exptl. Roberts v. Plant*, [1895] 1 Q. B. 507.  
*Quod. Symon v. Palmer's Stores*, [1912] 1 K. B. 259.  
*Repl. Hopley v. Tarvin Parish Council*, Chester (1910),  
74 J. P. 209.

3014. — Second application—After defect in  
writ cured.]—Where, on an application to enter  
final judgment under R. S. C., Ord. 14, r. 1,  
unconditional leave to defend has been given in  
consequence of a technical defect in the writ,  
plff. may, after the defect has been cured, make a  
second application for final judgment.

Upon a summons for judgment under R. S. C.,  
l. 14, in an action against the acceptors of a  
of exchange, unconditional leave to defend  
was given upon the ground that the name of the  
firm in which the bill was  
tioned on the writ. The writ was amended by  
the name of the firm as defts., & a h

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of

1 Q. B. 308; 66 L. J. Q. B. 328; 75 L. T. 670, C. A.

3015. Procedure on application—Examination of  
parties—Only in exceptional circumstances

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## 74 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

third party, from whom indemnity could be obtained, an application for leave to sign judgment in an action by indorsees against acceptors of the bill of exchange was granted, unless defts. paid the amount into ct. within 10 days.—*GERMAN BANK OF LONDON, LTD. v. SCHMIDT & Co.* (1876), 111. *Prac. Cas.* 86; 1 *Char. Cham. Cas.* 53.

**3017. When leave refused—Discretion of judge—Counterclaim.]**—Pltfs. specially indorsed their writ for certain sums of money claimed, by virtue of promissory notes & covenants, by way of a later amount. Upon defts. appearing, pltfs. sent a summons to sign final judgment under Act, 1875 (c. 77), Ord. 14. Defts. resisted the application, on the ground that they had a defence to the action on the merits, & also a counterclaim against pltfs.: *Held*: the to bring a counterclaim was not a right of course, but depended on the discretion of the judge, & as regards the defence, when there was "no fairly arguable point to be argued on behalf of defts.," effect must be given to Ord. 14, r. 1.

counterclaim, as disclosed by the affidavits, sufficiently connected with the cause of a defence, even to a

liquidated claim on a bill of exchange (*THESIGER, L.J.*).—*ANGLO-ITALIAN BANK v. WELLS, ANGLO-ITALIAN BANK v. DAVIES* (1878), 38 L. T. 197, C. A. *Mentd.* *Harrison v. Lascelles* (1887), 3 T. L. R.

**3018. Appeal from order granting leave—When granted—Evidence that note delivered as escrow.]**—Where, in an action upon a promissory note, upon the affidavit there was evidence that the note had been delivered as escrow:—*Held*: (1) R. S. C., 1875, Ord. 14, contemplated that deft. should be allowed to defend, whenever the affidavits disclosed reasonable ground for supposing that he had a plausible defence, & deft. should not be debarred from his defence, except where it was plainly vexatious & groundless; (2) upon the affidavits deft. had made out a plausible case, which he ought to be at liberty to submit to a jury, & an order of a judge at chambers, allowing pltf. to sign judgment under Ord. 14, must be set aside. *BECKINGHAM v. OWEN*, [1878] W. N. 215, C. A.

### C. Leave to Defend.

**3019. When leave granted—Fraud—Onus of proof shifted.]**—When pltf., in an action on a

under discount at pltf.

contended that the of the second note was in fraud of them:—*Held*: summary judgment must be set aside.—*BANK OF NEW v. MONTROSE PAPER CO.* 4 O. W. R. 404.—*CAN.*

**3018 III. — — — Objection to**

In an action on two promissory notes made payable to pltf.'s order the statement of claim alleged that the were duly presented for payment dishonoured without alleging at the place of payment. was entered but no of defence were delivered.

On the application for leave to enter judgment the judge received an affidavit showing that presentment was properly made:—*Held*: the could not be given effect to on *CROWELL v.* N. S. R. 257.—*CAN.*

an order in chambers for summary judgment on a specially indorsed writ on the ground that the note in question made by one of defts., by her attorney, was made without authority. On the face of the power of attorney no limitation was expressed, & it was expressly stated that the attorney had power to make

defts. should be allowed to only on condition of paying a sum of money into ct. or of giving security for the whole amount claimed within a week. On failure to do so appeal would be dismissed (*GLASS MANTLES & TILES, LTD. v. SHEPARD* (1915), 9 O. W. N. 141.—*CAN.*

PART XXII. SECT. 6, SUB-SECT. 2.

might be a defence in or in part:—*Held*: pltfs. judgment.—*Union Investment Co. v.* 19 W. R. 537.—*CAN.*

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12 P. R.  
CAN.  
3017 III. Plaintiff's An for summary of the writ the day after in an of had of trans- not et. by the in the THE WOODS P. R. in of ory In to that ion. the amount of promises the amount to pay: & as to the assumption. Pltf. treated the nullity, & signed judgment:— ar, it not filed in SMITH (1831), 2 All. CAN.  
by be in in the to set aside a deft. in case  
Offer Je- At 27 W.  
for balance, the total in- sum for Pltfs returned the  
not



bill of exchange, alleges that he is a *bond fide* judgment on his affidavit under Ord. 14, r. 1, holder for value of the bill, & deft. in his affidavit but deft. is entitled to unconditional leave to for leave to defend alleges that the bill was drawn defend, for the onus of proof that he is such in fraud of him, plff. is not entitled to sign final *bond fide* holder for value of the bill is cast upon

**h.** ———— *Canadian Bank of Commerce v. Indian River (May 1914), 39 W. L. R. 137. CAN.*

**i.** ———— *Unless money brought into court.*—In an action on a bill of exchange leave to defend will not be granted unless deft.'s affidavit discloses facts which would constitute a valid defence, or unless the money is brought in. —*GARNETT v. O'CONNOR (1862), 14 Ir. Jur. 367. IR.*

**k.** ———— *Contemporaneous agreement.*—In an action for £150 on foot of a promissory note a defence was put in that the note was made subject to an agreement between plff. & deft. that it should be paid for by instalments of £50 per year, without interest. —*Held* final judgment should not be given. —*DOLAN v. HENRY (1903), 39 I. L. R. 10. IR.*

**l.** ———— *Deft. alleged that the note in question was made conditional on a contemporaneous parol agreement that if certain monthly instalments were paid, & renewals for the balance of the debt & interest were given from time to time, the payee would not enforce payment of the note, & that deft. was ready & willing to perform such conditions.* —*Held* the motion for leave to mark final judgment should be refused. —*LARKIN v. CONNOLLY (1878), 12 I. L. R. 11. IR.*

**m.** ———— *On a motion by plff. for summary judgment in an action against the indorser of a bill, deft. alleged an oral agreement made by plff.'s manager that the bank would first exhaust their remedies against the makers before taking any proceedings against him, but this was not set up at the time when deft. indorsed the bill.* —*Held* deft. was entitled to unconditional leave to defend. —*INDUSTRIAL BANK v. FINKERT (1900), 6 O. W. R. 131, 161. CAN.*

**n.** ———— *Disputed by plff.* —*On a motion for summary judgment on a note deft. stated in his affidavit that the note was given as an acknowledgment on the understanding that deft. was to pay plff. \$5 a month as long as she lived, principal in that event to belong to deft. as his share of her estate.* —*Deft. was not cross-examined, neither was plff. plff.'s affidavit in reply denied deft.'s.* —*Motion dismissed with costs to deft. in the case.* —*LINDER v. BLIGHT (1901), 2 O. W. R. 101. CAN.*

**p.** ———— *In an action upon a promissory note deft., in answer to an application for summary judgment, swore that the note was given upon a certain condition which had not been fulfilled by the payee, that deft. was informed & believed that plff., the indorser of the note, were suing for the benefit of the payee, & were not holders for value, or took it after maturity. The source of the information was not given, & plff. positively denied that there was any notice of any condition.* —*Held* plff. were entitled to summary judgment. —*JOHNS v. MASON (1899), 15 P. R. 417. CAN.*

**q.** ———— *The mere belief of deft. that plff. is not a bond fide holder, & had notice of an agreement with a former holder not to look to deft. for payment, is not enough, when contradicted by affidavits in reply to constitute a ground for leave*

to defend. —*GARNETT v. O'CONNOR (1862), 14 Ir. Jur. 367. IR.*

**r.** ———— *Note delivered as received.* —*On application to sign final judgment in an action on a promissory note by the indorser against the maker, deft. filed an affidavit stating that the note had been handed by him to a third person to hold in escrow until the settlement of certain accounts between him & the payee, & that it had been delivered over to the payee without his consent.* —*Held* deft. was entitled to defend without showing that plff. was not a holder in due course. —*FLORIN CITY BANK v. CONNERY (1898), 12 Man. L. R. 305. CAN.*

**s.** ———— *Agreement for renewal.* —*During the currency of a promissory note it was agreed between the indorser & indorsee that the note should be renewed at maturity, & from time to time on payment of a named sum, "if the renewal notes are continued in the same firm or names as at present." Before the maturity of the note the maker died. After its maturity in an action on the note against the indorser deft. set up such agreement as a defence & alleged that he duly offered to perform it so far as it lay in his power, by leaving the said note & liability of the maker & giving his note in renewal as agreed as collateral to the said note, which tender deft. refused to accept.* —*Held* a motion for immediate judgment should be dismissed. —*PRINCEAL BANK v. HORE (1881), 8 O. R. 208. CAN.*

**t.** ———— *Held* in an action upon a promissory note to which a defence of a written agreement to renew is pleaded, deft. is entitled to go down to trial upon such a defence. —*CHAMBERLAIN v. HOSKIN (1913), 32 W. L. R. 588, 9 W. W. R. 289, 25 D. L. R. 821. CAN.*

**u.** ———— *Absence of authority.* —*Plff. claimed summary judgment on two promissory notes made by the C. P. Co., one payable to the order of deft. C. & the other payable to deft. B.'s order. The notes were in renewal of a series of similar ones. Deft. B. & plff. agreed for the discount by plff. of the notes under an agreement, which provided that B. should not sell securities deposited with him under par value without the consent of C. & another.* —*Held*, even if this agreement were unauthorized, the co. having signed the notes & received the proceeds could not set up the want of authority as a defence. —*ONTARIO BANK v. CAPITAL POWER CO. (1904), 10 W. R. 180. CAN.*

**v.** ———— *Absence of consideration.* —*On a motion for judgment, in an action on a promissory note deft. filed an affidavit showing that he was an accommodation maker, & stating his information & belief to be that plff. were aware of the fact, that they held the note as collateral security, & that they never gave any value for it, & further that since the making of the note M. the payee, had become insolvent & made an assignment, & that there was litigation pending between plff. & his assignee in respect of certain securities alleged to be held by plff. on account of his indebtedness. An affidavit of plff.'s manager was filed denying knowledge that the note was an accommodation one, & stating that it was discounted by plff. & the proceeds placed to M.'s credit.* —*Held*

not a case in which judgment could be ordered. —*HEATHMAN v. DODD (1885), 10 P. R. 563. CAN.*

**w.** ———— *Upon a motion by plff. for summary judgment on a specially indorsed writ for a note made by deft., the making was not disputed, but deft. alleged the note was made for plff.'s accommodation & that neither deft. received any value whatever therefor. It was not possible to gather from the evidence that there was any priority between the parties, or that deft. were in any way liable to plff., or that plff. were sureties for any debt which deft. owed.* —*Held* deft. were entitled to unconditional leave to defend. —*HEATHMAN v. DODD (1905), 6 O. W. R. 345. CAN.*

**y.** ———— *On a motion for summary judgment, one ground of defence was that the note was given to M. plff.'s debtor, as accommodation growing out of partnership dealing, all of which was known to plff.'s wife. Plff. swore she knew nothing of this partnership & the wife had not been examined as a witness on the pending motion.* —*Held* the motion should be granted. —*HAIN v. HAIN (1909), 13 O. W. R. 750. CAN.*

**z.** ———— *In an action on a promissory note, the defences were that it was given on account of an instalment of purchase money of land to which vendor could not make title, & upon the assurance of vendor that it would not be lost, the only evidence given on behalf of plff. bank was that of a manager having no personal knowledge of the circumstances under which the bank became holders of the note, & who did not know whether the note was discounted by the bank or merely held as collateral or on collection, there was no evidence of a previous agreement to give security.* —*Held* a motion for summary judgment could not succeed. —*ROYAL BANK v. HENRY (1915), 32 W. L. R. 312, 9 W. W. R. 60, 24 D. L. R. 275. CAN.*

**a.** ———— *Notice.* —*In answer to a motion by plff. for summary judgment in an action upon a promissory note made by deft. in favour of a trading co. & indorsed by them to plff., whose manager swore that they were the holders thereof in due course for value, deft. made an affidavit in which he stated that he had never received any consideration for the note, that he made it for the accommodation of the co., that he had heard the local manager of plff. say that the note was not discounted by them, but was simply left with them, that he believed the local manager was aware when he received the note that it was an accommodation one, & was also aware of the arrangement entered into between the co. & deft. at the time the note was made, & that an arrangement placed by plff. in charge of the books of the co. was present when that arrangement was made. He did not state that the local manager had the requisite notice to effect plff., nor the grounds of his belief that he had such notice; nor did he state that the arrangement referred to had any other notice or knowledge of the agreement referred to, nor did he adduce any hearsay evidence in support of the defence attempted to be set up.* —*Held*

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third party, from whom indemnity could be claimed, an application for leave to sign judgment in an action by indorsee against acceptors of the bill of exchange was granted, unless defts. paid the amount into ct. within 10 days.—**GERMAN BANK OF LONDON, LTD. v. SCHMIDT & Co.** (1876), 11tt. Prac. Cas. 86; 1 Char. Cham. Cas. 53.

**3017. When leave refused—Discretion of judge—Counterclaim.]—**Pltfs. specially indorsed their writ for certain sums of money claimed, by virtue of promissory notes & covenants, by way of a liquidated amount. Upon defts. appearing, pltfs. took out a summons to sign final judgment under Jud. Act, 1875 (c. 77), Ord. 14. Defts. resisted the application, on the ground that they had a good defence to the action on the merits, & also a good counterclaim against pltfs.: *Held*: the right to bring a counterclaim was not a right of course, but depended on the discretion of the judge, & as regards the defence, when there was "no fairly arguable point to be argued on behalf of defts.," effect must be given to Ord. 14, r. 1.

If the counterclaim, as disclosed by the affidavits, were sufficiently connected with the cause of action, it might be set up as a defence, even to a

claim on a bill of exchange

**L.J.]—ANGLO-ITALIAN BANK v. WELLS, ANGLO-ITALIAN BANK v. DAVIES** (1878), 38 L. T. 197, C. A. v. Lascelles (1887), 3 T. L. R.

**3018. Appeal from order granting leave—When granted—Evidence that note delivered as escrow.]**

are, in an action upon a promissory note, the affidavit there was evidence that the note had been delivered as escrow:—*Held*: (1) R. S. C., 1875, Ord. 14, contemplated that deft. should be allowed to defend, whenever the affidavits disclosed reasonable ground for supposing that he had a plausible defence, & deft. should not be debarred from his defence, except where it was plainly vexatious & groundless; (2) upon the affidavits deft. had made out a plausible case, which he ought to be at liberty to submit to a jury, & an order of a judge at chambers, allowing pltf. to sign judgment under Ord. 14, must be set aside. **BECKINGHAM v. OWEN**, [1878] W. N. 215, C. A.

C. to Defend.

**3019. When leave granted—Fraud—Onus of proof shifted.]—**When pltf., in an action on a

*of writ out of jurisdiction—Evidence of fraud—Contractual.* Pltfs. moved for a writ for the amount of a bill of exchange made by the State of New York, in Ontario, Canada, made by a person in the State of New York, who was then in a march of

to the indulgence of judgment & execution. **LOWDEN v. MARTIN** (1888), 12 P. R. 496.—**CAN.**

**3017 III.** *Plaintiffs not prejudiced by ordinary procedure.*—An unopposed application for summary judgment made the day after service of the writ of summons, in an action by a trader upon a bill of

but the ct. that pltfs. would not be by the in way.—**LAKE OF THE WOODS MILLING CO. v. APPS** (1897), 17 P. R. —**CAN.**

*out of time.]—In a on a promissory note, that the non sum of the promises to the amount of \$7 94., which h*

*nullity, & —Held: not that the plea was filed in* **SAYRE v. SMITH** (1851), 3 All. **CAN.**

**3018 I.** *When granted—Defence of fraud established.]—Where the defence of fraud was sufficiently established by the affidavits filed by deft. for the purpose in one action of answering motion for summary judgment, & in the other action in support of a motion by deft. to set aside a default —Held: the order in the*

*in* **CITY** (1914), 27 W. L. R. 34.—**CAN.**

*in fraud of makers.]—Defts. to the P. by them to date, in P. pltf.*

under discount at pltf. bank, ded that the negotiation of the second note was in fraud of them:—*Held*: summary judgment must be set aside.—**BANK OF NEW BRUNSWICK v. MONTROSE PAPER CO.** (1904), 4 O. W. R. 404.—**CAN.**

**3018 III.** *—Objection to of claim—Not taken.]—In an action on two payable to pltf.'s statement of claim alleged that the were duly presented for payment dishonoured without at the place of was entered but no*

On the application for leave to enter judgment the judge received an that presentment

could not to on N. S. R. —**CAN.**

from an order in chambers for summary judgment on a specially indorsed writ on the ground that the note in question made by one of defts., by her attorney, was made without authority. (On the face of the power of attorney no limitation was expressed, & it was expressly stated that the attorney had power to make instruments:—

defts. should be allowed to only on condition of sum of money into ct. or of givi for the whole amount week. On failure to do so the

**MANTON & TILES, LTD.** 1, 9 O. W. N.

CAN.

**XXII. SECT. 6.** 2.

*g. H. has leave granted—No real defence.]—In an action upon a promissory note, the affidavits not showing any real defence to the action, though they suggested a possibility that there might be a defence in whole or in part:—Held: pltfs. might sign final judgment.—**UNION BANK v. ANSON INVESTMENT CO.** (1911), 19 W. L. R. 331.—**CAN.***

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bill of exchange, alleges that he is a bond fide holder for value of the bill, & deft. in his affidavit but deft. is entitled to unconditional leave to defend, for the onus of proof that he is such in fraud of him, plff. is not entitled to sign final bond fide holder for value of the bill is cast upon

**H. — — — — —** [CANADIAN BANK OF COMMERCE v. INDIAN RIVER GRAYL CO. (1914), 20 W. L. R. 121. — CAN.]

**J. — — — — —** [Unless money brought into court.] In an action on a bill of exchange leave to defend will not be granted unless deft.'s affidavit discloses facts which would constitute if proved a valid defence, or unless the money is brought in. — **CLARKETT v. O'CONNOR** (1862), 14 Ir. Jur. 367. — IR.

**K. — — — — —** [Contemporaneous agreement.] In an action for £145 on foot of a promissory note a defence was put in that the note was made subject to an agreement between plff. & deft. that it should be paid for by instalments of £50 per year, without interest. — **Held**. Final judgment should not be given. — **DOLAN v. HENRY** (1905), 39 I. L. R. 19. — IR.

**L. — — — — —** [Deft. alleged that the note in question was made conditional on a contemporaneous oral agreement that if certain monthly instalments were paid, & renewals for the balance of the debt & interest were given from time to time, the payee would not enforce payment of the note. & that deft. was ready & willing to perform such conditions. — **Held**. The motion for leave to mark final judgment should be refused. — **LYNCH v. CONNOLLY** (1913), 12 I. L. R. 71. — IR.]

**M. — — — — —** [On a motion by plff. for summary judgment in an action against the indorser of a bill, deft. alleged an oral agreement made by plff.'s manager that the bank would first exhaust their remedies against the maker before taking any proceedings against him, but this was not set up at the time when deft. indorsed the bill. — **Held**. Deft. was entitled to unconditional leave to defend. — **INDUSTRIAL BANK v. FURWELL** (1901), 6 O. W. R. 121, 161. — CAN.]

**N. — — — — —** [Disputed by plff.] (In a motion for summary judgment on a note deft. stated in his affidavit that the note was given as an acknowledgment on the understanding that deft. was to pay plff. \$5 a month as long as she lived, principal in that event to belong to deft. as his share of her estate. Deft. was not cross-examined, neither was plff. Plff.'s affidavit in reply denied deft.'s Motion dismissed with costs to deft. in the cause. — **LANDEN v. BRIGHT** (1903), 3 O. W. R. 353. — CAN.]

**P. — — — — —** [In an action upon a promissory note deft. in answer to an application for summary judgment, swore that the note was given upon a certain condition which had not been fulfilled by the payee, & that deft. were informed & believed that plff., the indorsers of the note, were suing for the benefit of the payee, & were not holders for value, or took it after maturity. The source of the information was not given, & plff. positively denied that there was any notice of any condition. — **Held**. Plff. were entitled to summary judgment. — **JONES v. MASON** (1899), 18 P. R. 412. — CAN.]

**Q. — — — — —** [The mere belief of deft. that plff. is not a bond fide holder, & had notice of an agreement with a former holder not to look to deft. for payment, is not enough, when contradicted by affidavit in reply to constitute a ground for leave

to defend. — **CLARKETT v. O'CONNOR** (1862), 14 Ir. Jur. 367. — IR.]

**R. — — — — —** [Note delivered as correct.] — (In application to sign final judgment in an action on a promissory note by the indorser against the maker, deft. filed an affidavit stating that the note had been handed by him to a third person to hold in escrow until the settlement of certain accounts between him & the payee, & that it had been delivered over to the payee without his consent. — **Held**. Deft. was entitled to defend without showing that plff. was not a holder in due course. — **FINCH CITY BANK v. CONWAY** (1893), 12 Man. L. R. 303. — CAN.]

**S. — — — — —** [Agreement for renewal.] During the currency of a promissory note it was agreed between the indorser & indorsee that the note should be renewed at maturity, & from time to time on payment of a named sum, "if the renewal notes are continued in the same firm or names as at present." Before the maturity of the note the maker died. After its maturity in an action on the note against the indorser deft. set up such agreement as a defence, & alleged that he duly offered to perform it so far as it lay in his power, by leaving the said note & liability of the maker & giving his note in renewal as agreed as collateral to the said note, which tender plff. refused to accept. — **Held**. A motion for immediate judgment should be dismissed. — **PRUDENTIAL BANK v. HARR** (1881), 6 O. R. 709. — CAN.]

**T. — — — — —** [Held. In an action upon a promissory note to which a defence of a written agreement to renew is pleaded, deft. is entitled to go down to trial upon such a defence. — **OSWEGO v. HOSKINS** (1815), 32 W. L. R. 588; 9 W. W. R. 269; 25 D. L. R. 421. — CAN.]

**U. — — — — —** [Absence of authority.] Plff. claimed summary judgment on two promissory notes made by the C. P. Co., one payable to the order of deft. C. & the other payable to deft. S.'s order. The notes were in renewal of a series of similar ones. Deft. C. & plff. agreed for the discount by plff. of the notes under an agreement, which provided that S. should not sell securities deposited with him under par value without the consent of C. & another. — **Held**. Even if this agreement were unauthorized, the co., having signed the notes & received the proceeds could not set up the want of authority as a defence. — **ONTARIO BANK v. CAPITAL POWER CO.** (1906), 10 W. R. 140. — CAN.]

**V. — — — — —** [Absence of consideration.] — (In a motion for judgment, in an action on a promissory note, deft. filed an affidavit showing that he was an accommodation maker, & stating his information & belief to be that plff. were aware of the fact, that they held the note as collateral security, & that they never gave any value for it, & further that since the making of the note M., the payee, had become insolvent & made an assignment, & that there was litigation pending between plff. & his assignee in respect of certain securities alleged to be held by plff. on account of his indebtedness. An affidavit of plff.'s manager was filed denying knowledge that the note was an accommodation one, & stating that it was discounted by plff. & the proceeds placed to M.'s credit. — **Held**:

not a case in which judgment could be ordered. — **HUTCHINS v. GORDON** (1853), 10 P. R. 363. — CAN.]

**W. — — — — —** [Upon a motion by plff. for summary judgment on a specially indorsed writ for a note made by deft., the making was not disputed, but deft. alleged the note was made for plff.'s accommodation & that neither deft. received any value whatever therefor. It was not possible to gather from the evidence that there was any priority between the parties, or that deft. were in any way liable to plff., or that plff. were surerties for any debt which deft. owed. — **Held**. Deft. were entitled to unconditional leave to defend. — **HUTCHINS v. GORDON** (1853), 6 O. W. R. 318. — CAN.]

**X. — — — — —** [On a motion for summary judgment, one ground of defence was that the note was given to M., plff.'s debtor, as accommodation growing out of partnership dealing, all of which was known to plff.'s wife. Plff. swore she knew nothing of this partnership & the wife had not been examined as a witness on the pending motion. — **Held**. The motion should be granted. — **HAIR v. HAWES** (1900), 13 O. W. R. 750. — CAN.]

**Y. — — — — —** [In an action on a promissory note, the defences were that it was given on account of an instalment of purchase money of land to which vendor could not make title, & upon the assurance of vendor that it would not be used, the only evidence given on behalf of plff. bank was that of a manager having no personal knowledge of the circumstances under which the bank became holders of the note, & who did not know whether the note was discounted by the bank or merely held as collateral or in collection; there was no evidence of a previous agreement to give security. — **Held**. A motion for summary judgment could not succeed. — **ROYAL BANK v. HENRY** (1915), 32 W. L. R. 349; 9 W. W. R. 60; 24 D. L. R. 375. — CAN.]

**Z. — — — — —** [Notice.] — (In answer to a motion by plff. for summary judgment in an action upon a promissory note made by deft. in favour of a trading co. & indorsed by them to plff., whose manager swore that they were the holders thereof in due course for value, deft. made an affidavit in which he stated that he had never received any consideration for the note, that he made it for the accommodation of the co.; that he had heard the local manager of plff. say that the note was not discounted by them, but was simply left with them; that he believed the local manager was aware when he received the note that it was an accommodation one, & was also aware of the arrangement entered into between the co. & deft. at the time the note was made; & that an accountant placed by plff. in charge of the books of the co. was present when that arrangement was made. He did not state that the local manager had the requisite notice to effect plff., nor the grounds of his belief that he had such notice; nor did he state that the accountant referred to had any other notice or knowledge of the agreement referred to, nor did he adduce any hearsay evidence in support of the defence attempted to be set up. — **Held**:

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8. Summary judgment: Sub-sect. 2, C. . 7.]

*v. ALEXANDER*  
L. J. Q. B. 103; 47 L. T. 443, D. C.

*Reid. Edwards v. Davis* (1888), 4 T. L. R. 385.

**3020. — Conditionally—Defence not bona fide inconsistent.]—A.**

two bills for £45 and £25, passed by E., the drawer, his son, to plff. for goods sold. On an appeal against refusal to give leave to defend under R. S. C., Ord. 14, the defence was that A. only to enable E. to pay for a piano, & not to enable E. to pay for the goods; & that E. had told A. that plff. was informed of that. When the bills were presented to A. for he made no answer, & when the bills

were presented at his bankers, the answer was "arranged with drawer":—*Held*: the defence set up was inconsistent with such answer & not bona fide, & leave ought not to be given, unless the money were brought into ct. or security given. —*BLAIRBERG v. ABRAMS* (1884), 77 L. T. Jo. 255, C. A.

**3021. — Gambling debt.]—**In an action brought by the holder for value of a negotiable instrument, with notice that it was made for the purpose of paying gambling losses to the person in whose favour it was made, deft. is entitled to to defend under R. S. C., Ord. 14, r. 1.—*v. O'NEIL* (1885), 2 T. L. R. 169, D. C.

**3022. — Counterclaim.]—**Leave to defend an action under R. S. C., Ord. 14, on an

deft. had not a good defence on sufficient to defend. *Bank v. KELLY* (1896), 17 P. R. CAN.

b. for in to that of but ondi- to 17 P. R. CAN.

c. Two bills for bill was given, & that there

7 L. L. T. Jo. 508. IR. d. In for that note was given for was void under Bills of C. s. 20 (4), in

that note (1901), CAN.

action a of IR a receipt in full. ABRAHAM (1878), 12 L. L. T. Jo. 202.

for y en the for at & to (1914), I. L. to

not granted for on to defend any with in in or d any r. M. 22.—IR.

who claimed to be the holder in due justify the suspicion that plff. was not the holder in due *Held*: deft. should have an y to establish his defence of a or part failure of consideration.—*v. DOUGLAS* (1912), 23 W. L. R. 194; 7 D. L. R. 438; 3 W. W. R. 139.—CAN.

j. —. —. Plffs. sued on a promissory note made by deft. M. in favour of deft. J., which the latter to plffs. Plffs. indorsed the note to a bank, & on taking it up at maturity, left the indorsement on the note, & it was still there when they moved for summary judgment:—*Held*: plffs. should be permitted to strike out the special indorsement to the bank, & deposit the note in ct., & on doing so might have summary judgment notwithstanding the defence that plffs. were not holders in due —*RAT PORTAGE LUMBER CO. v. JONES* (1914), 26 W. L. R. 765.—CAN.

k. — *Right of drawer to sur- Bill not indorsed by payee.*—Action on three bills of exchange drawn on defts. to the order of the

bank for on appeal the full ct. ived. —*VELLY v. HEM- STREET* (1909), 11 W. L. R. 297.—CAN.

**3019 L. — Fraud.]** On a motion for summary judgment on two notes, defts. pleaded fraud, of which they gave notice to the dates of

must trial & the motion IASTH BANK r. 2 O. W. R. 47.—CAN.

of the by to become

had to unconditional r. KILLS 2 O. L. R. CAN.

for on to defend any with in in or d any r. M. 22.—IR.

m. — *Forgery — Staleness of demand.*—On a motion for judgment against the indorsers of two promissory notes, deft. denied his signature to the larger note; the smaller one had been made five years before, payable one year after date:—*Held*: deft. should be allowed to defend.—*EDWARDS v. STONE* (1909), 14 O. W. R. 644.—CAN.

motion for summary judgment on a note, indorsed by deft. before delivery to plffs. to whom it was payable & by whom it was indorsed without *Held*: defts. should have to defend, on condition of a speedy trial.—*W. r. CUMMINS* (1907), 10 O. W. R. 561.—CAN.

**3020 II. — Defence no on facts.]—**In an action upon a sory note the only fact shown by defts., an incorporated co., as the basis of a defence, was that they made the note for the accommodation of one of their directors. They did not show that were not holders for value in course without notice that the note was before maturity in t course of their banking business: & it was admitted that one of the trustees for defts., who were insolvent, had offered to plffs. the compromise of fifty cents on the dollar, which the undoubted creditors were accepting. Upon a motion for summary judgment: defence alleged was not any known facts, but mere guess work, & unless defts. into ct. a substantial portion of plffs.' claim as a condition of being to defend, the motion

BANK OF CHICAGO v. ONTARIO COAL CO. 16 P. R. 87.—CAN.

by note that he handed it over in an condition is suspicious, & if he cannot speak positively as to the cave to defend on that ground be refused.—*HAY v. HOI* 1 N. Z. L. R. 779.—N.Z.

l. — *Counterclaim.]—* On for summary j: that the notes in for accommodation only, &

for plffs. but until after execution of not ta. r. 4 O. W. R. 983 4 O. W.

Plff. Defts.' claim failure of



# PART XXII. —ACTIONS ON AND IN CONNECTION WITH NEGOTIABLE INSTRUMENTS. 477

bill of exchange will not be given where a counter-claim is set up, unless there are very strong reasons for so doing.—NEWMAN v. LEVER (1887), 4 T. L. R. 1, D. C.

**Appeal from order granting When granted—No appearance of**

In an action on a bill of exchange for £250, drawn by M. on & accepted by deft., & by M. indorsed to plff., who sought to obtain summary judgment under R. S. C., Ord. 14, deft. made an affidavit with a view to show a set-off on a bill him & M., & was allowed to defend. It was on the part of plffs. that a certain property put up for sale, & M. told deft. of it, that & M. agreed that it would be a good thing, that M. as agent interested himself in getting an offer from the auctioneers who had the sale in hand, that in the result the sale was carried out & deft. bought the property & in consideration of the services M. had rendered him he gave him the bill for £250 as such reward, & that

doubt if the purchase would be out not to part with was carried out, & the bill passed to plff. Dft. stated that he had given M. £250 on his representation that it might be to pay it to the auctioneers, but that, in fact, it, & that M.

it, & that the bill was given to M. under the impression that he had received to deft., whereas, in fact, had sums

title to the bill, as it appeared upon own affidavit, that there was no defence to the action nor any appearance of a defence, & plff.

v. O, 4 T. L. R. 385, C. A.

against same defendant—On second bill by him. If a on a bill, the

act of will. Two actions to C. S. P.

**Costs of After issue joined & notice of trial**

of bills of trial, on the terms of on & not trial without 11 L.

**Stay of proceedings— Note given for revenue laws— Penalty levied on of for the amount of a under the the**

perjury a true bill found AYSHERTON v. CHA K. B. 210; 90 E. R. 845.

**On payment of bill & If actions be brought of a bill, the ct.**

any bill & costs that action, but not against payment of costs in all the a E. R.

**be brought if interest paid Payment of interest action brought.** Upon a note of if

up. A I. & an

## INTERLOCUTORY PROCEEDINGS.

### 3024. Consolidation

action

pur- OF HAMILTON v. 10 P. R. 118 CAN.

to expedite but 90 W.

CAN.

PART XXII. SECT. 7.

to judgment

Defts. d their

1401 J. W. 31, R. 408 1 Peak. L. R. 399 CAN.

Co. (1889), 1 L. R. 257—N.Z.

in 31 N. B. R. 112.

IR. 11 11

-In

in default. for in the that in the

The

Held to

The ct. proceeds except on in ct. 4 L. Ch. R.

to

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Sect. 7.

ings. [ 8 & 9.]

**3029. — Action by depositary—Taking bill with notice that depositor suing thereon.]—**If plff. deposits a negotiable instrument, on which is suing, at the same time giving notice of the action, he does not thereby part with his right of action, & if the depositary sues on the same instrument, the ct. will not at the instance of deft. stay the proceedings in the first action. *Semble*: the ct. would restrain the depositary from suing on the instrument, on the ground that he receiving it with notice of the suit then pending, must be considered as having consented that the first action shall proceed. *MARSH v. NEWELL* (1808), 1 Taunt. 127 E. R. 773.

*Consd. Deuters v. Townsend* (1864), 5 B. & N. 613

**3030. — Action against defendant & others as drawers—Action against defendant alone as acceptor.]—**Where plff. sued deft. with others as drawers of a bill of exchange, & also sued deft. afterwards alone, as acceptor, the ct. refused to stay the proceedings in the last action, on the ground that it was vexatious & oppressive, as the character in which deft. was sued in each

*Wise v.* (21), 9, 303; 147 E. R.

**3031. Security for costs—Plaintiff suing on assigned bill—For benefit of assignee.]—**It is no for calling on plff. for security for costs, plff. has assigned away one of the bills of sued on, & that he sues on it for the of his assignee. *PAHRY v. EVAN* (1847), 120 E. R. 206; 9 L. T. O. S. 78.

**3032. Delivery up of instrument—On payment of debt & costs.]—**On rule to show cause why plff. should not deliver up a note to A., which note A. had paid as one of the indorsers:—*Held*: although the note was a forged note, A. might notwithstanding an action upon it against the other & the rule should be made absolute. *SEAGRAVE* (1731), 2 Barn. K. B. 82; 94 E. R. 370.

**3033. —** [In an action by on a bill of exchange, a rule plff. to deliver up the bill on payment of

debt & costs:—*Held*: to be complied with by plff.'s delivering it up in such a state of obliteration as to render it totally useless, the names of the drawer & indorsers being blotted out.—*TOMLINS v. LAWRENCE* (1830), 6 Bing. 376; 4 Moo. & P. 54; 8 L. J. O. S. C. P. 111; 130 E. R. 1325.

**3034. —** [Where actions are brought the of a bill of exchange, who, with the acceptor, offer to pay the amount & the costs of all actions brought *bond fide*, the ct. have, upon such payment, authority to make an order upon the holder, to deliver the bill to the acceptor, whose property in such circumstances it is.—*DAVIS v. TUNNICLIFF* (1838), 7 L. J. C. P. 238.

**3035. —** [Plff. sued deft. on a bill of exchange, & at the same time proceeded by summons in bkpey. The action having been stayed on payment of debt and costs:—*Held*: plff. had no right to keep the bill until the costs in bkpey. were paid.—*CORNES v. TAYLOR* (1854), 10 Exch. 441; 24 L. T. O. S. 81; 3 W. R. 14; E. R. 509; *sub nom.* *COWE v. TAYLOR*, 18 Jur.

Delivery up generally, *see* Sect. 9.

### SECT. 8.—THIRD PARTY PROCEDURE.

*generally, PRACTICE & PROCEDURE.*

**3036. Action against acceptor—Drawer brought in as third party.]—**In an action by indorsee of a bill of exchange against acceptor, it was sought to bring in as a third party the drawer, against whom fraud was alleged, &, although there was a doubt whether deft. had a claim against the drawer, this not being the case of an accommodation indorsement, still as the acceptor claimed indemnity from the drawer, leave was given to serve the drawer with a third party notice.—*PEARSON v. LANE* (1875), 90 L. T. Jo. 105; Bitt. Prac. Cas. 61; 1 Char. Cham. Cas. 63.

*Annotation*:—*Mentd. Corrie v. Allen* (1883), 48 L. T. 461.

**3037. —** [Directions.]—Where the holders of a bill of exchange had brought an action against the acceptors, & the latter had served a third party notice on the drawer, who had duly & further directions were asked for as to





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*Sect. 9. - Delivery up and cancelling of negotiable 10.]*

commissions, agreed with plff. to promote him to the steps of lieutenant & captain for £200, for which plff. gave him a bill of exchange, that plff., soon after his promotion, was illegally deprived of his commissions by deft., that taking money for commissions in such regiments was contrary to the King's orders, & that deft. had not returned the commissions to the War Office, as obtained by purchase, according to the practice, where they might be sold, that deft. had put the draft in suit, & the money was in the sheriff's hands in execution. The bill prayed an injunction, & return of the money levied, & the draft to be delivered up to be cancelled. Deft. demurred generally: *Held*: the demurrer should be overruled. *WHITTINGHAM v. BURGOYNE* (1797), 3 Anst. 900; 115 E. R. 1076.

**3044. Bill void at law.]**—A partner, after the partnership ceased, gave a joint note. A bill was filed to strike out plff.'s, the former partner's, name, have the bill retained for a year, & a trial had, when plff. at law could not prove the partner- & was nonsuited, yet Lord Thurlow, C., on reserved, refused to decree the name to be erased. *RYAN v. MACKMATH* (1789), 3 Bro. C. C. 15; 29 E. R.

*Mentd.* *v. Wyatt* (1790), 2 Cox, Eq. 3 Mj. & Cr. 97.

**3045. Bill obtained by fraud—Delivery up after action begun at law.]**—Plff. was the insurer of deft.'s ship, which was lost, & thereupon plff. deft. promissory notes for the amount. Having afterwards reason to suspect fraud, he refused to pay the notes. An action at law was brought, & plff. filed a bill for discovery & injunction, & to have the notes delivered up: *Held*: the succeeding at law did not destroy the equity of plff. *LISLE v. LIDDLE* (1795), 3 Anst. 610; 115 E. R.

**— Delivery up after non-suit in action at law.** A., the exor. of B., filed a bill against C., that C. had fraudulently obtained a bill of from B., & praying that the bill might be delivered up. It appeared that an action had been brought by the direction of C. on the bill, & that after the evidence for plff. had been gone into, & for plff. had elected to be nonsuited. C. sd to give any undertaking to have another tried at the next assizes. The ct. took into eration the alleged fraud, & b

that an inference of fraud was to be drawn, ordered the bill to be delivered up.—*ALLEN v. DAVIS* (1850), 4 De G. & Sm. 133; 20 L. J. Ch. 44; 16 L. T. O. S. 278; 64 E. R. 767.

**Payment in pending action at law Supplemental bill for repayment.]**—A suit instituted to have a bill of exchange delivered up, on the ground of fraud, & to restrain an action at law commenced thereon. Pending the suit, plff. in the action recovered & obtained payment: *Held*: plff. in equity might file a supplemental bill, stating those facts, & praying repayment & indemnity.—*PINKUS v. PERENS* (1842), 5 Beav. 253; 6 Jur. 431; 49 E. R. 575.

*Annotation*:—*Distd. Jackson v. Shanks* 917.

*Jur. N.*

.]—Plff.'s bill charged that a certain bill of exchange ought to be delivered up to be cancelled, on the ground of fraud, & that "A., of defts., had knowledge that another of C., had been mixed up with irregular transactions connected with bills of exchange": *Held*: to be not scandalous, & A. was bound to answer.—*FINNEY v. GODFREY* (1869), 21 L. T. 631.

**3049. Bill obtained by duress & threats.]**—Promissory notes, given by plff. to prevent a threatened prosecution for alleged cheating, decreed to be delivered up.—*OSBALDISTON v. SIMPSON* (1843), 13 Sim. 513; 1 L. T. O. S. 335; 7 Jur. 734; 60 E. R. 199.

*Annotations*: *Reid. Whitmore v. Farley* (1880), 43 L. T. 192. *Mentd. Davies v. London & Provincial Marine* (1878), 38 L. T. 478; *Jones v. Merionethshire Permanent Bldg. Soc.*, [1892] 1 Ch. 173.

**3050. Accommodation bill—Bill transferred to defendant without consideration.]**—A bill alleged that plff., without consideration, gave a promissory note, & accepted certain bills of exchange for the accommodation of A., & that A. discounted the note & negotiated the bills for his own use, & paid them before or after they became due, & told plff. that he had done so, & that he was ready to give them up to plff. The bill also alleged that A. afterwards fell ill, & when he was near his death, his son found among his papers the note & bill uncanceled, & handed them over to B., who gave them to deft., & that deft. knew, when he received them, that B. had obtained possession of them without the sanction of A., & without consideration, & the bill sought to have the note & bills delivered up, & to restrain an action by deft. upon them. *Qu.*: whether, the case of fraud not having been proved, plff. could obtain relief, upon proof that the note & bills were given without

*to* pay more than the of the amount of after *HELM v. O. W. N. 412.—CAN*

it at maturity, but with P. he indorsement to to settle the s. If it was to a bill broker for it to M., a

to the maker of the refused. P., the indorser, an action to restrain M. & the from dealing with the & for its delivery to P. was entitled to recover it

*Held* S. C. R.

ment condition.)—By an of certain notes receipt by plff. of to be made to him The

the notes for mutual profit. the note. M.'s firm had a against the maker of the an agreement was made with the broker by which the latter was to

b. Absence of an action on a l. in

that there was no & that deft.

—in note it was in ed y, for the in the to

now of the notes. which liability arise did not notes must be *r. CUNDLE* (1918), 14 O. W. N. —CAN.

k. Notes given upon innocent misrepresentation.]—Action by E. delivery up & cancellation of



him & plff., that they  
when overdue.—PARR v  
(1855), 1 J. 871; 3 W. R. 507; 69 E. R.  
—Ridd. Parker v. Lewis (1813), 28 L. T. 91

### 10.—ACTION OF TROVER OR CONVERSION

#### 3051. Onus of proof as to possession.

*Prima facie* evidence of property in  
; & in trover for a banknote, it is not a  
*prima facie* case for plff., to prove, that the note  
belonged to him, & that deft. afterwards ex-  
it, & deft. will not be called upon to show his  
to the note, without evidence from the other side  
he got possession of it *malis fide* or without

is a distinction between ne-  
& common chattels. With respect  
to the former, possession is *prima facie* evidence  
ly. I must presume, that deft., when  
of this note, was a *bona fide* holder for a  
consideration (Lord Ellenborough, C.J.).  
v. MILSON (1809), 2 Camp. 5, N. P.

n of value & good faith. —See Part X.

10.

#### 3052. Before bill due — Misappropriation by

receiving bill for indorsement. —If a party  
a bill payable to order, for the purpose of g-  
it indorsed for another person, procures the in-  
dorsement, pays in the bill to his own account at  
the

of the bill, & his draft is honoured, an action of  
trover may be commenced against him before the  
bill is due, but not an action for money had &  
received. ATKINS v. OWEN (1836), 4 Ad. & El.  
819; 2 Har. & W. 59; 6 Nev. & M. K. R. 309; 6  
L. J. K. R. 267; 111 E. R. 962.

#### 3053. Transferor without authority to transfer — Transferee without notice.

of a negotiable instrument held by a person who is  
a party to it, & apparently its holder; & if the  
of a bill, who is also in possession of it

authorized way him for the in a  
bill  
in i believing it of the not in a  
it

, will not an act of a com- d by by the  
to , at all , if the bill  
of it has to

an for the party transferring the bill  
him. liable to him. in the hands  
evidence of a have by in in

H. & N. (25 L. J. Ex. 313; 27 L. T. O. S.  
156 E.

Transferee with — To  
for a bill of ex that

, & that deft., that R. had authority  
use of it of him as a pledge to  
the pa ed. Replication, that  
at the time of R. deft. knew he  
had not authority to Held: sufficient.

117; 7 N. C. 413; 7  
Jur. 312; 132 E. R. 8 L. J. C. P. 257; 3

#### 3055. Forged note — Holder for

On pl H. that all  
by his a  
to G. & at  
at

the law

matter

N. B. R.

CAN.

O. W. N. 2 1 12 O. W.  
D. H. 61 L. 4 O. W. N.

Two notes  
7)

of to in  
to refer  
H. J

### XXII.

for  
full  
C. W.

a bill

held the notes  
by whom collected  
J. on the faith of

the notes to  
as they  
in

(1877) 41 U. C. R.

if was CAN.

VI.

11

10.—*Action of trover or conversion. Sect. 11: Sub-sects. 1, 2 & 3.*

& the letter to D., to get the note discounted. The note had been indorsed to pltf. by G. D. left it with defts., who made inquiries, which led them to think the signature of H. was a forgery, & G. was prosecuted & convicted of the forgery. Defts. refused to return the note to pltf., having received a notice from H. not to part with it: *Held*: as the note was handed to pltf. for security for a debt, he had a title to the note as against G., who had handed it to him, & as the notice to defts. from H. did not deprive pltf. of his right to hold the note as against G., defts. had no right as against pltf. to keep the note. *BRIDG. v. DISCOUNT BANKING CO. OF ENGLAND & WALES, LTD. (1894), 11 T. L. R. 163.*

**Lost bill.**—See Part XVI., Sect. 1, *ante*.

**3056. Wrongful possession—Negligence of drawer no defence.**—Negligence in the custody of a draft or in its transmission by post will not dis-entitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it. Negligence, to amount to an estoppel, must be in the transaction itself & be the proximate cause of leading the third party into mistake, & also must be the neglect of some duty which is owing to such third party or to the general public.

merchants at New York, desiring to £1,000 to W. & Co., of Bradford, pur- of S. & Co. in New York a draft for that amount drawn by S. & Co. on S., P. & Co., London, payable to the order of pltf., on demand. Pltf., indorsed the draft specially to W. & Co. or order, & it was put in a letter addressed to them which was put in a letter box in their office to be posted in the usual way. The letter was by H., a clerk in the employ of pltf., who was in the employ of W. & Co., & procured defts., in London, to present the draft & obtain money, which was placed by them to the account of a person acting in concert with H., upon whose cheques the money was almost immediately drawn out. In an action for money had & received, defts. in order to show that the negligence of pltf., in the custody & transmission of the draft afforded a defence for the fraud, & so estopped them from recovering for the money, tendered evidence that it was a usual & almost invariable practice amongst merchants sending large remittances from abroad to send, besides the letter containing the re-mittance, a letter of advice by the same or the next mail. That evidence was rejected, on the ground that the alleged negligence was collateral only to the transaction giving rise to the action: *Held*: pltf. entitled to recover the money received to

their use was not affected by the felonious act of H., & the evidence tendered was properly rejected.

What was done by defts. amounted to a con-version of the bill (*per CUR.*)—**ARNOLD v. C BANK, ARNOLD v. CITY BANK (1876), 1 C. P. D. 578; 45 L. J. Q. B. 562; 34 L. T. 729; 40 J. P. 711; 24 W. R. 759.**

—**Consd.** Patent Safety Gun Cotton Co. v. Wilson (1880), 49 L. J. Q. B. 713. **Apprvd.** Fine Art Soc. v. Bank of London (1886), 17 Q. B. D. 705. **Distd.** of the Staple of England v. Bank of — 21 Q. B. D. 160. **Consd.** Kleinwort v. D'Escompte De Paris, [1891] 2 Q. B. 157. **Refd.** Bank of England v. Vagliano, [1891] A. C. 107; v. Credit Lyonnais, [1897] 1 Q. B. 148; Gordon v. City & Midland Bank, Gordon v. Capital & Bank, [1902] 1 K. B. 242; Macbeth v. North & South Wales Bank, [1906] 2 K. B. 718; London Joint Stock Bank v. Macmillan & Arthur, [1918] A. C. 777. **Mentd.** Keith v. Burrows (1876), 1 C. P. D. 722; Matthiessen v. London & County Bank (1879), 5 C. P. D. 7; London & South Western Bank v. Wentworth (1880), 5 Ex. D. 98; Union Fabrik Act v. Pickford & Lee & Harris 4 T. L. R. 617; McEntire v. Potter (1889), 22 Q. B. D. 438; Brocklesby v. Temperance Bldg. (1893), 2 R. 594; Scholfield v. Loundesborough, 1 A. C. 514; Davins v. London & South Western Bank 5 Com. Cas. 1.

## SECT. 11.—THE HEARING.

### SUB-SECT. 1.—CONDUCT OF ACTION.

**3057. Right to begin—Action on instrument with money count—Special pleas & never indebted—Plaintiff not undertaking to prove different transac-tion.**—In an action on a bill or note, & a common money count, special pleas to the one, & never indebted to the other, if pltf. does not un-derstand to prove a different transaction on the latter deft. is entitled to begin.—**OKLEY v. (1861), 2 F. & F. 656, N. P.; subsequen (1862), 11 C. B. N. S. 805.**

**Annotations:** **Refd.** Oakley v. Boulton (1888), 4 T. L. R. 379. **Mentd.** Hogg v. Skeen (1865), 11 Jur. N. S. 244.

— **As regards payment & satisfaction.** See Part XIV., Sect. 2, sub-sect. 11, *ante*.

**3058. Proof of handwriting—Action on joint & several note—Severance of pleas—Handwriting admitted in one plea.**—When pltf. on a joint & several promissory note declares against defts. jointly, & they sever in their pleas, & one of them by his plea admits his handwriting to the note, & the other pleads *non assumpsit* at the trial, pltf. must prove the handwriting of all.—**GRAY v. PALMERS (1794), 1 Esp. 135, N. P.**

**Annotation:** **Distd.** Glen v. L. T. O. S. 284.

**3059. Striking out indorsement—After bill read & objected to.**—An indorsement on a bill of exchange, not stated in the declaration, may be

of of trover for a paid of it not or that was note in between the parties:—*Held*: not having identified the note was no legal defect in the evidence of the witness as to to 4 U. C.

—A., for the risk of liability, although the was valueless.—**DUNN v.**

in him of the note at it up to of trover the con-the

A. on In as should be (not a. 11. 322.

PART XXII. SECT. 11. SUB-SECT. 1.

& by the to do to at on a promissory that by it deft & Co. £100 & ms B. & Co. indorsed the note & no or



check out after the bill has read it on  
the 247, N. P.  
sub-sect. 3, Part XI., S 15.

to the bill, left in of  
e of attorney in  
the before the was tried at the  
ring resident in  
was too late; (2) plff. was not bound to  
the bill on the trial without.  
NORF. CLARK (1843), 14 M. & W.  
Dow. & L. 87; 15 L. J. Ex. 40; 5 L. T. O. S.  
153 E. R. 409.

S OF INSTRUMENT.  
See, also, Nos. 2293-2295, 2380, 2381, ante.

No notice to produce—Cheque given for  
To a in on

Notice to admit insufficient.)—In  
by a

won at an  
Deft. did not give notice to produce the ch  
Held: on such issue, plff. was not bound to  
the cheque, either as part of his own case, or, when  
called upon to do so at the trial, as part of deft's  
evidence. READ v. GAMBLE (1837), 10 Ad. & El.  
597, n.; 113 E. R. 227; sub nom. REED v.  
5 Nev. & M. K. B. 433.

of  
in this  
bill of exchange in the usual manner  
was not such an admission  
with production of the bill. VAIN

Conad. Sheen v. Howard (1839), 5 L. J. O. S.  
Avery Collins

1843, 14 M. & W. 200

3061. — Bill given after bankruptcy.

On inquiry, in  
of exchange, to

tion in

of a writ of  
the bill without producing it in  
(1841), 2 Q. B. 251; 1 Gal Day 712;  
N. S. 502; 11 L. J. Q. B. 51 Jan. 1084;  
114 E. R. 90.

in  
whereby bill was void.  
the acc. was in part p  
Issue the Held: the  
did to

On reference to master—To compute

On a reference to  
A interest, in  
a promissory, it is  
the note, a  
of the, &

842, 3 Q. B. 1  
2 L. J. B. 56; 6 Jur

114 E. R. 770.  
1872, 7 Exch. 639

Bill to agreement To give  
credit.)—To a in assumed on a bill of

DAVIS  
188, 10 L. J. C. P. 3 C. B. 600; 4  
E. R. 242. 8 L. T. O. S.

XVI., s

A by an  
but the bill was l. &  
that  
of the bill  
L. J. T. O. S. 51, 147.

3063. to too late. 11.

The

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, & it 22. 1853, 10 L. T. O. S.

L. J. B.

CAN. 1861).

L. J. O. S.

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PART XXII. SECT. 11. SUB-SECT. 2.

in note any  
to

*Sect. 11. — The hearing: Sub-sect. 4.]*

**4.—ADMISSIBILITY OF EVIDENCE.**

**3067. To identify—Maker—With indorser.]—**On the proof of the indorser of a promissory note his acknowledgment, that the name indorsed on the note was his handwriting, is not sufficient to prove the indorsement in an action brought by pltf., as indorsee, against deft., as drawer.—**HEMINGE v. ROBINSON** (1732), Barnes, 436; 94 E. R. 992.

**3068. ———.]—**In an action upon a promissory note, the subscribing witness to which is dead or resides abroad, it is necessary, besides proving the handwriting of the subscribing witness, to give some evidence of the identity of the party sued with the party who appears to have executed the promissory note.—**WHITELOCKE v. (1833)**, 1 Cr. & M. 511; 3 Tyr. 541; 2 L. J. Ex. 210; 149 E. R. 502.

*Annotations: —* **Apld.** Jones v. Jones (1841), 9 M. & W. 730. **Distd.** Greenshields v. Crawford (1842), 1 M. & W. 75. **Sewell v. Evans** (1843), 7 Jur. 554; **Barker v. Stead** (1847), 3 C. B. 946.

**3069. ———.]—**In an action by against maker of a promissory note, deft. pleaded, that he did not make the note, & that he made it for the accommodation of pltf. There was an attesting witness to the note, who, on being called at the trial, stated that he saw the signature, Hugh Jones, to the note written by a party whose occupation & residence he described, but that he had had no communication with him since, & that it was a common name in the neighbourhood where the note was made: *Held*: there was no evidence to go to the jury of the identity of deft. with the maker of the note, & the second plea could not be called in aid for that purpose. **JONES v. JONES** (1841), 9 M. & W. 75; 11 L. J. Ex. 265; 152 E. R.

*11 v. Evans, Roden v. Ryde (1841), 9 M. & W. 730. Distd. Stebbing v. Spicer (1849), 8 C. B. 861. Mentd. v. Roberts (1849), 7 C. B. 861.*

**Acceptor.]—**See Part VI., Sect. 3, 2.

**3070. ——— Payee—Letters of Introduction, etc.]—**In an action by indorsee against acceptor of a bill of exchange, whereof E. was the payee, pltf. proved that a person calling himself E. came to C., having in his possession the bill, & also a letter of introduction, proved to be genuine, which was expressed to be given to a person introduced to the writer as E. & also another bill of exchange, drawn by the writer of that letter. The bearer of those documents, after remaining 16 days at C., which time he daily visited pltf., indorsed him the bill & received value for it, & also a letter of credit: *Held*: that was evidence of the

identity of such person with E. the payee of the bill, etc., in the absence of any evidence in answer, sufficient to justify a verdict for pltf.—**BULKELEY v. BUTLER** (1824), 2 B. & C. 434; 3 Dow. & Ry. K. B. 625; 107 E. R. 446.

*Annotations: —* **Consd.** Corfield v. Parsons (1833), 1 Cr. & M. 730. **Refd.** Jones v. Jones (1841), 9 M. & W. 75. **Mentd.** Sewell v. Evans (1843), 7 Jur. 554; **Barker v. Stead** (1847), 3 C. B. 946.

**3071. ——— Drawer—With indorsee—Bill drawn in name of fictitious person.]—**Where a bill is drawn in the name of a fictitious person, payable to the order of the drawer, the acceptor is considered as undertaking to pay to the order of the person who signed as the drawer, & an indorsee may bring evidence to show that the signatures of the supposed drawer, to the bill & to the first indorsement, are in the same handwriting.—**COOPER v. MEYER** (1830), 10 B. & C. 468; L. & Welsb. 172; 5 Man. & Ry. K. B. 387; 8 L. J. O. S. K. B. 171; 109 E. R. 525.

*Annotations: —* **Consd.** Schultz v. Astley (1836), 2 Bing. N. C. 544; **Boeman v. Duck** (1843), 11 M. & W. 251; **London & South Western Bank v. Wentworth** (1880), 5 Ex. D. 107; **Bank of England v. Vagliano**, [1891] A. C. 107; **L. Vagliano v. Bank of England** (1889), 23 Q. B. D. 243; **Id. Ashpitel v. Bryan** (1863), 3 B. & S. 474; **Im Thurm** (1866), Har. & Ruth.

**3072. ——— Indorsee—With drawer—To let in letters & declaration of drawer.]—**What is sufficient evidence, in an action by indorsee, against acceptor of a bill of exchange, to identify pltf. with the drawer of the bill, so as to let in the declarations & letters of the drawer.—**GIBBONS v. (1831)**, 3 L. J. Ex. 138.

**3073. ———.]—**A person, on being sent by deft., an indorser of a bill of exchange, to pltf., the indorsee, to inquire as to the solvency of B., a prior indorser, went to pltf.'s residence, & on the street door being opened, a person in a dressing gown, whom he had never seen before or since, asked him what his business was:—*Held*: not sufficient evidence of identity to let in evidence of the conversation.

It is a question for the judge, & not a point for the consideration of the jury, whether the evidence of identity is sufficient in such case.—**CORFIELD v. PARSONS** (1833), 1 Cr. & M. 730; 3 Tyr. 806; 2 L. J. Ex. 262; 149 E. R. 593.

**3074. To show forgery of acceptance.]—**In an action against the acceptor of a bill of exchange, who defends himself on the ground of his acceptance being forged by A., evidence that A. forged his acceptance to another bill & absconded on that account is not admissible.—**BALCETTI v. (1792)**, 192, N. P.

. 11 El.

**PART XXII. SECT. 11, SUB-SECT. 4.**

the to W. pltf. A. was the person to. ——— in an action of plaintiff to ——— in the bill (3) of to W. : "I further it had for by of on — & in

of certain obligations due the bank.—**HORTHWICK v. SCOT.**

307. ——— of the against

might be given: (1 to

in the bill (3) of

on — & R.



**3075. To show usurious consideration.]**—Where, to an action by indorsee against maker of a promissory note, the defence is usury in its original concoction, letters from the payee to the maker, stating the consideration as between them, if shown to have been contemporaneous with the making of the note, are admissible evidence to prove the usury. —KENT v. LOWEN (1808), 1 Camp. 177, N. P.

Consid. Beauchamp v. Parry, 7 Moore, C. P. 1 R. & Ad

**3076. To prove making of note.]**—On the of an action of detinue for a promissory note, the note was called for by plff.'s counsel, & produced by deft.'s counsel, & had on the back the following memorandum: "This draft was signed in my presence, on the date within named. D." Held: (1) plff. must call D. to prove the making of the note; (2) if plff. had the note read in evidence, he was, if required by the other side, bound to read an indorsement on the note as well as what written on the face of it. RICHARDS v. (1840), 9 C. & P. 221, N. P.; subsequent 1, 6 M. & W. 420.

Head. Mason v. Farnell (1844), 12 M. & W.

**To prove signature.** Part 1.

**. To show acceptance only accommodation**

In an action against the acceptor of the following memorandum: "Ige that you have, for my with, for £25, payable, etc., & I for the same when due." with re the bill on: Held: to be admissible in a stamp. —NOTLEY v. WENN (C. B. 834; 136 E. R. 1107).

**3078. To prove real contract.** bill of exchange was drawn, with a blank for

by an agent of plff., who, by the place w/wards inserted, 1 of the drawer & afterwards added, & at

that plff.'s name of plff. filed a bill for law in 1. R. 5 E. 131 J. Ch. 241; T. 16 W. R.

**3079. Letters—Of indorser.]** It against the maker of a note, letters are not admissible evidence to after the note was paid (1793), 1 Esp. 10, N. P.

**3080.** by of a e for an a by P.

**3081. — Whilst holder of note.** In an action by r of a note, obtained from by of who had indorsed to plff., had d, of all which plff. had notice deft. was not at liberty to read letter written whilst he was holder of the note, it was alleged would have implicated plff. in fraud, for no evidence had been given to plff. with A. or to show that the note had indorsed to plff. w (1839), 10 Ad. & El. 106; 2 Per. 4 Jun. 83; 113 E. R. 41.

To In was for the of in, & had to the who they d as the A M. was in re was out Held: the C. B. 709. 10 C. 1 W W a party by that he as surety thereon only for E., & that M., really

## [ 4. Sect. 12.]

**3082. — Of drawer—To prove fraud.]—**Where the acceptor of a bill of exchange, against whom an action had been brought by the holder, had given the latter notice to prove the consideration he had given for such bill, & letters of the drawer were given in evidence to show that the transaction between him & the holder was fraudulent: *Semble*: such letters were properly received as evidence at the trial.—*COSTER v. MEREST* (1822), 7 Moore, C. P. 87; 1 L. J. O. S. C. P. 2.

**3083. Declarations—Of drawer—To prove fraud.]—**In an action by indorsee of a bill of exchange against acceptor, the declaration of the drawer is admissible in evidence, to show that the bill was obtained by fraud, but plff. must be shown to be in some way privy to the fraud.—*PECKHAM v.* (1824), 1 C. & P. 232, N. P.

**3084. — In previous action on same bill.]—**In an action on a bill of exchange by drawer & acceptor, in order to rebut the presumption, from plff.'s possession of the bill, that he the holder, deft. offered in evidence a draft of a declaration delivered in 1829 in an action on a bill of exchange of the same date & amount, & drawn & accepted by the same parties, in which action plff. & another sued as assignees of a bkpt.: *Held*: insufficient to call upon plff. to show how he became repossessed of the bill in his individual character.—*DABBS v. HUMPHRIES* (1834), 10 Bing. 410; 4 Moo. & S. 285; 3 L. J. C. P. 139; 131 E. R. 977.

**3085. — Of former holder—While in possession of bill.]—**Declarations of one, who has been holder of a bill of exchange, cannot be received in evidence, unless they were made while the party had possession of the bill.—*POCOCK v. BILLING* (1821), 2 Bing. 269; 1 C. & P. 230; 9 Moore, C. P. 499; 3 L. J. O. S. C. P. 261; 130 E. R. 309.

*Expld.* *Barrough v. White* (1825), 4 B. & C. 301; *Reid*, *Lee v. Harrison* (1826), 5 L. J. O. S. Ch. 30.

—Where the drawer of a bill of exchange indorses it to a third person as a valid security, & whilst it is current, his declaration afterwards that it was an accommodation bill, will not defeat the indorsee's right to sue the acceptor.—*BROOM* (1824), 4 Dow. & Ry. K. B.

**3087. — The declarations of a holder of a bill of exchange, made whilst the bill is current, are not admissible, in an action against**

the acceptor, against a subsequent holder under an indorsement made before the bill became due:—*SMITH v. DE WRUITZ* (1825), Ry. & M. 212, N. P.; *subsequent proceedings, sub nom. SMITH v. DE WITTS*, 6 Dow. & Ry. K. B. 120.

**3088. — In a suit instituted against A. & B. to have bills of exchange, which have been negotiated from A. to B., delivered up, on the ground that it was a fraud in A. to negotiate them, & that B. was a party to the fraud, the admissions of A., while the bills were in his possession, that he was not entitled to negotiate them, are admissible in evidence.]—***LEE v. HARRISON* (1826), 5 L. J. O. S. Ch. 30.

**3089. — Indorsee agent to sue for indorser.]—**In an action by indorsee of a bill of exchange against acceptor the declarations of an indorser, made whilst he was holder, are evidence to go to the jury against a holder under an indorsement made before the bill was due, if there be evidence which satisfies the judge that the indorsee, plff., is merely an agent to sue for the indorser; the jury are afterwards to judge, first, of the agency, & then of the effect of the declarations.—*WELSTEAD v. LEVY* (1831), 1 Mood. & R. 138, N. P.

**3090. — Of third person—When note signed—Payee not present.]—**What is said by a third party at the time of the signing of a promissory note, as to the consideration for which it is signed, is not evidence against the payee, if he was not present.—*HEALEY v. JACOBS* (1827), 2 C. & P. 616; 5 L. J. O. S. K. B. 180.

**3091. — Of plaintiff before becoming holder.]—**In an action on a promissory note a declaration, made by plff. before he became the holder, is evidence to invalidate the note.—*WILLIAMS v. WILKINSON* (1820), 5 Man. & Ry. K. B. 121.

## SECT. 12.—NEGOTIABLE INSTRUMENTS AS EVIDENCE.

**3092. To show terms of deposit.]—**A banker deposited a sum of money with the banker, & received a note, by which the banker promised to pay the principal at 10 days' sight, with 3 per cent. interest to the day of acceptance. The banker paid interest on the note, but at the same time told the customer, that he would not, in future, pay more than 2½ per cent., & in his presence

**3093. —** found that there was a community of the & privy the in. (1841). *M'HENRY* (1842), 3 Kerr. —CAN. —In an action & discounted by *Field*: that statements made by agent to an indorser for accommodation, in order to obtain his indorsement, not evidence in a suit against the indorser. —L. C. R. 411.

**3094. —** of by him as surety for reasons of to giving the note against deft. —CAN. (1837), 3 All. 443. L. — Of in favour of deft., & by him indorsed to plff., with the & a bill of without that the was to in proof on the count for the by de an his not one of the to the a bill of the jury for the purpose of afterwards its

the terms of the note by striking out 3 & 4. It be payable to A. B.  
24: the note was admissible in  
to show the terms on which the deposit was made.  
—SUTTON v. TOOMER (1827), 7 B. & C. 416; 1  
Man. & Ry. K. B. 125; 6 L. J. O. S. K. B.  
100 E. R. 778.

1 Ch. 548. 19 M. & W.

**3093. On money counts—Action by drawer against acceptor—Bill payable to order of drawer—**  
A bill of exchange, payable to the order of drawer, in an action by him against the good evidence under the money  
v. Morgan (1811), 3 Camp. 101, N. P.

**3094. — Action by indorsee maker.]**  
A promissory note is not admissible in the money counts, in an action by indorsee.

M. N. P.

**3095. On covenant by drawer to pay bills—Production of bills by acceptor—In action by acceptor against drawer.**—In an action on a covenant by deft. to pay the amount of all bills drawn by him & accepted by plff. it is

GIBSON v. FLATHERSTON, 1  
225, N. P.

**3096. Of money had & received.]** In an action by indorsee against acceptor of a bill the bill is not admissible as evidence.  
EALY v. HON. 109 E. R. 100; 109 E. R. 100.

**3097. — Production of note payable to A. B. or of a bank promissory**

Atty. Gen. v. H. (1811),  
12 Reg. Rep. 151. IR.  
p. Of making 1. In  
to  
H. & C.

1841 Bank  
8 C. 160

SCOT.

c. 7

CAN.

All. 154.—CAN.

11

L. C. J.

on documents as promissory notes con-

in

of plff. K. B. 125; 6 L. J. O. S. K. B. 100 E. R. 778.

Of

stated—Action by

in an action by  
bill would not be  
an  
EALY v. HON.  
1. J. O. S. K. B. 125; 109 E. R.

R. & Ad.  
1017.

**3098. — Action by payee against Note by one member of non-mercantile**  
Declaration on a promise authority by a solr. in with a count on and, spe recover £ first with &

the note set forth in the from, etc., to the day of for

I. was

by

Q. B. 21

114 E. R.

109 E. R. 100

Note to cover interest on

In  
r £  
for £117

July up to July

a debt of £117

In A  
PERRY v. BLADE

1841 Bank  
8 C. 160

Atty. Gen. v. H. (1811),  
12 Reg. Rep. 151. IR.  
p. Of making 1. In  
to  
H. & C.

**3099. —** If a bill of exchange is drawn for balance of account acknowledged to be due to plff. from the drawer, who has no funds in the drawer's hands, plff. may recover on the count upon the account stated, if in consequence of not alleging the error for non-payment, he is unable to recover upon the special count. K. B. 125; 6 L. J. O. S. K. B. 100 E. R. 778.

**3100. —** Action between parties to a promissory note is evidence of an account stated between the maker & the payee, but not between the maker & an indorsee. — PATRICK v. HENSON (1811), 1 V. L. R. 118.—AUS.

Instrument postponing time of payment.—Def., being indebted to plff., gave him three documents, intended to be acceptance



*Secd 12. — Negotiable instruments as evidence.*  
13 & 14.]

115; 1 New Pract. Cas. 322; 6 L. T. O. S. 168;  
10 Jur. 31; 115 E. R. 817; *sub nom.* PENNY v.  
SLADE, 15 L. J. Q. B. 10.

**3101.** — — — — — [A promissory note was given  
by deft. to plffs. in 1840, payable five years after  
date, for value received: — *Held*: it was evidence  
of an account stated. — *FRYER v. ROE* (1852), 12  
C. B. 437; 138 E. R. 977.

**3102.** — — — — — **Action by executors of payee against  
maker of note.]** — *Assumpsit* by the exors. of  
payee of a promissory note against deft. as maker.  
Plffs. produced the note with the following indorsement  
upon it, signed by deft. & one of plffs.:  
"Memorandum, that £1 7s. 6d., one quarter's  
interest, was paid on the within note. W. P.,  
T. P." — *Held*: that was sufficient evidence of an  
account stated with the exors., without any proof  
of the time of testator's death. — *PURDON v.*  
*PURDON* (1842), 10 M. & W. 362; 12 L. J. Ex. 3;  
152 E. R. 595.

**3103.** — — — — — **Action by indorsee against indorser.]**  
— In an action on a bill of exchange by indorsee  
against immediate indorser, with the common  
money counts, including a count on an account  
stated, the particulars stated that the action was  
brought to recover the money due upon the bill,  
& that for recovery thereof plff. would rely upon  
the whole or any of the counts. Deft. pleaded  
to the first count, no notice of dishonour, & plff.  
at the trial abandoned that count: — *Held*: he  
was not precluded by the particulars from giving  
the bill in evidence, & recovering on the account  
stated. — *BRAY v. GORDON* (1843), 2 L. T. O. S. 108.

**3104.** — — — — — **Indorsement in blank.]** — A  
declaration alleged that deft. made his bill of  
exchange, & directed same to J., & required him  
to pay to deft.'s order £187 15s., & then indorsed  
the bill to plffs. It appeared that the bill had

been drawn by F., & indorsed by deft. in blank,  
& having been delivered by deft. to F., was by  
him taken to a bank of which plffs. were the  
managers, where it was received by them in  
renewal of another bill discounted by them, &  
drawn & indorsed by the same parties: — *Held*:  
plffs. were not entitled to recover on the account  
stated. — *BURMESTER v. HOGARTH* (1843), 11  
M. & W. 97; 12 L. J. Ex. 178; 152 E. R. 730.

*Annotation*: — *Mentd.* *Matthews v. Bloxsome* (1861), 4  
New Rep. 139.

**3105.** — — — — — **Action by indorsee against acceptor  
— Bill indorsed in name of deceased person with  
knowledge of acceptor.]** — Declaration by the exor.  
of B. upon a bill of exchange, purporting to be  
drawn by A. & accepted by deft., & indorsed by  
A. to B., with a count upon accounts stated.  
Plea, that A. did not indorse the bill. A., who was  
used of goods, being the stock in trade

premises, died intestate, & indebted to deft.  
other persons, & it was arranged between B. &  
deft., who were two of his next of kin, that deft.  
should take possession of the goods & accept a  
bill of exchange for their value, purporting to be  
drawn & indorsed by A. The goods were delivered  
to deft., & the bill declared upon was drawn &  
indorsed to plff. by procuration in the name of  
A., & accepted by deft. *Semble*: the bill was  
evidence of an account stated. — *ASHPITEL v.*  
*BRYAN* (1864), 5 B. & S. 723; 122 E. R. 999; *sub*  
*nom.* *ASPITEL v. BRYAN*, 33 L. J. Q. B. 328, Ex. Ch.

*Mentd.* *McCance v. L. & N. W. Ry. Co.* (1864),  
34 L. J. Ex. 39; *Brook v. Hook* (1871), L. R. 6 Exch. 89;  
*Garland v. Jacob* (1873), L. R. 8 Exch. 216; *Vagliano*  
*v. Bank of England* (1889), 23 Q. B. D. 243.

**3106.** **Of existence of debt — Production of cheque.]**  
— The acceptance by a creditor of a cheque in his  
favour, drawn by his debtor, operates as payment,  
unless dishonoured. The mere fact of a person  
drawing such a cheque in favour of another is not  
evidence of a debt.

The production of this cheque is not evidence of

to  
plff.  
for  
on  
on  
KING  
All.  
his  
to  
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proportions  
not to be  
U.  
Note  
A claim  
of the  
& the defence is available under the  
general issue. — *HILL v. LOTT* (1856),  
13 U. C. R. 465. — CAN.  
In an  
one surety for  
of  
joint  
is  
r.  
Ont.  
633. — CAN.  
of  
which  
by  
the  
N. died without having paid the  
bill &  
On  
the form of  
bill  
B.  
can  
not  
be  
of debtor &

at future fact of was known to the  
r. CRAWFORD'S  
U. C. R. 257. — CAN.

**3106 i.** **Of evidence of**  
of set-off stated, "That before &  
the time of exhibiting the bill,  
was indebted to deft.," etc.  
declaration was entitled generally of  
Easter Term, which commenced on  
May 5: — *Held*: a  
made by plff., which was  
deft. on the same May 5, could  
be given in evidence under this  
— *DINGK v. STICKNEY* (1839), N.  
709. — CAN.

**3106 ii.** A cheque which  
not evidence of a debt  
from to the payee, but  
proof of the consideration  
it was given. — *DURHAM*  
*v. ST. LOUIS* (1888), M. L. R. 4 S. C.  
310. — CAN.

**3106 iii.** — — — — — [Purchaser agreed to  
accommodate N. with the loan of  
for 2

any loan; if it be evidence of anything, it is rather evidence of payment (PATTERSON, J. v. PEARCE & DAVIS (1834), 1 Mood. & R. 305, N. P.).

*Annotations.*—*Reid*, *Gordon v. Bruce* (1868), 11 L. T. 445; *Marocco v. Richardson*, (1898) 2 K. R. 384.

**3107. Of loan—Production of cancelled cheques & promissory notes.**—For the purpose of proving petitioning creditor's debt, plffs. produced certain cancelled cheques, drawn by bkpt. upon J. & Co., & called one of their clerks, who stated, from recollection merely, that at the time of the cheques being drawn, bkpt.'s account was greatly overdrawn. They produced also a promissory note for upwards of £150, dated long before the fiat, made by bkpt., payable to J. & Co., & which had been seen in their possession a few days before the trial: *Held*: neither the cheques nor the note were sufficient to prove petitioning creditor's debt, for the former were *prima facie* evidence of payment of a debt due from J. & Co. to bkpt., & the latter was no evidence, as against the stranger, of any debt due at the time of its date. *FLETCHER v. MANNING* (1844), 12 M. & W. 571; 13 L. J. Ex. 150; 2 L. T. O. S. 371; 152 E. R. 1320.

*Annotations.*—*Meuld*, *Re Baldwin, Ex p. Foss* (1856), 2 De G. & J. 230, 120 L. R. 185; 21 L. J. Q. B. 193.

**3108. — Action by assignee—Cheque drawn by bankrupts.**—In an action by assignee, proof that a cheque for a certain sum in debt's favour was drawn by bkpts. upon their bankers, & that the amount thereof was placed by their bankers to debt's credit, is no evidence to go to a jury of a loan of money to debt. by bkpts. *GRAHAM v. COX* (1848), 2 Car. & Kir. 702, N. P.

**3109. — To show to whom made—& repayment on account.** Note with receipt indorsed thereon. — By a promissory note E. W. & J. jointly & severally promised to pay to A. £300, with interest. W. having afterwards paid A. £280 on account of the note, A. made the following indorsement upon it: "Received of W. £280, on account of the within note, the £300 having been originally advanced to E." In an action brought by W., who had paid the whole amount due,

involving the whole transaction in absurdity. *H. W.* the bill though awkward in part of form was nevertheless good as a document of debt. *DALRYMPLE v. BARNES* (1810), House of Commons.

**3109 iv.** *Incomplete instrument.*—L's error in an action against W. founded on an incomplete instrument in the form of a bill of exchange, signed by W. as acceptor, but lacking the signature of L. the drawer, in whose repository it was found at his death. The instrument was dated & addressed from L.'s house, & L. & W. had had a long series of business transactions. *Held*: the instrument was a valid proof of indebtedness. *LAWSON v. PARSONS & WATSON* (1907), 41 W. L. R. 516. — CAN.

**3109 v.** *Partnership.*—Partner & a deceased brother had been in partnership & on the dissolution of this partnership by way of settling accounts his brother gave partner a bill of exchange. In an action against the estate, dated of the brother, the bill was produced when it appeared that it was signed by the brother but not accepted nor addressed to any one as acceptor. *Held*: the document as it stood was not a bill of exchange; but was nevertheless liable to touch a debt of the sum mentioned in it. —

*PANDEY v. PANDEY* (1913), 2 C. L. T. 209 SCOT.

**3107 i.** *Of loan (cheque).* The production of a cheque is not even *prima facie* evidence of money lent by the drawer. *PEARCE & DAVIS* (1834), 1 Mood. & R. 305. — CAN.

**3107 ii.** *A cheque on a bank indorsed by the payee is not evidence of a loan to him by the drawer.* *ALLAN v. KING* (1904), Q. R. 258 (312). — CAN.

**3107 iii.** *In an action for repetition of an alleged loan, promisor produced in proof of the loan a bank cheque in favour of defendant, & indorsed by him. Defendant admitted that he had received payment of the cheque, but with the qualification that the cheque had been received by him in payment of a debt. Held: the loan had not been indicated by the cheque.* *HARRISON (MRS.) v. HARRISON* (1872), 10 March. (12 of Nov.) 527, 41 W. L. R. 204. SCOT.

**3107 iv.** *(Prescribed note.)*—A prescribed note cannot be admitted as proof of a loan. *DUNN v. CHAMBERLAIN* (1894), 10 L. J. 52. — CAN.

**i.** *Of payment.*—By drawer to payee. A cheque on a bank indorsed by the payee is, of itself & un-

against J., to recover contribution from him "as a co-surety": *Held*: the indorsement was admissible in evidence, to prove not only the payment of the £280, but also that the money was originally advanced to E. as principal. *DAVIES v. HUMPHREYS* (1840), 6 M. & W. 153; 9 L. J. Ex. 203; 151 E. R. 301.

*Annotations.*—*Reid*, *Doe d. Kintake v. Barton* (1840), 7 C. B. 436. *Meuld*, *Pitt v. Purwood* (1841), 6 M. & W. 558; *Kemp v. Hudson* (1844), 12 M. & W. 421; *Perceval v. Nanson* (1845), 7 Exch. 1; *Harford v. Hawes* (1853), 2 K. & R. 287. *Re Snowden*, *Ex p. Snowden* (1881), 17 Ch. D. 44; *Wolmerhausen v. Gullick*, (1893) 2 Ch. 514; *Stirling v. Burdett*, (1911) 2 Ch. 418.

**3110. In action against surety—Statute of Frauds, 1677 (c. 3).**—Where the contract between a creditor, debtor, & surety is embodied on a bill of exchange, in an action by the creditor against the surety on the bill, no other evidence save the bill is required to satisfy Stat. Frauds, if the obligation revealed on the face of the bill is the precise obligation the surety has agreed to undertake. — *HOLMES v. DUNNELL* (1883), 40 Ch. & D. 23, N. P.

*Annotations.*—*Meuld*, *Jenkinson v. Conder* (1892), 65 L. J. Q. B. 780.

**Post-dated cheques.**—See Part IV., sect. 2, *ante*.

**Necessity for stamp.**—See Part XXV., *post*.

## SECT. 13. COSTS.

**Security for costs.**—See No. 3031, *ante*.

**Right to proceed with action for costs—After payment.**—See Part XIV., Sect. 2, sub sect. 3, *ante*.

## SECT. 14. EXECUTION.

**3111. Stay of judgments in actions against drawer & indorser.** Tender of principal in one action & costs in both. — Plff brought two actions

plained, proof of a payment by the drawer to the payee. *ALLAN v. KING* (1904), Q. R. 258 (312). — CAN.

**ii.** *Of payment of debt.* *Interference with cheque.* A cheque of plff's, when produced at the hearing, had written on it, "in full of all his (the deft's) claims for notes or otherwise," which words plff wrote upon the cheque, when sent to deft., which the latter denied, however. Four coupons were on the face of the cheque, & these plff stated were the initials of a clerk in the bank, whom he had requested to initial the words so introduced. *Held*: It could not be received as evidence of a receipt in full, in the absence of the bank clerk, who should have been called as a witness. *LIVINGTON v. WINT* (1880), 27 Lr. 211. — CAN.

## PART XXII. SECT. 16.

**ii.** *To whom available.*—An indorser of a note cannot pay the amount of a judgment obtained thereon against a previous indorser, & enforce it for his own benefit. *CARR v. COULTER* (1829), 2 P. R. 317. — CAN.

**3111 i.** *Stay of judgment against former partner.* *Part payment by continuing partner.* *(Production of note.)*—A note was made by deft. on, for a

**. 1.2 & 3.1**

upon a promissory note, one against the drawer, & another against the indorser, & recovered in both: *Held*: the principal having been tendered in one, & the costs in both, no execution should be taken out. *WINDHAM v. WITHER* (1722), 1 Stra. 515 E. R. 671.

3112. — [Bill substituted for bill given for debt—Judgment by default.]—An injunction will not be granted to restrain debt. from taking out execution on a judgment being suffered by default, on a case made by bill & answer that the bill of exchange, on which the action had been brought, was given in consideration of debt.'s delivering up a former bill, which had been indorsed in consideration of a gaming debt. *GRAVES v. HORNBITCH* (1810), 2 Price, 147; 146 E. R. 49.

**3113. Allegation of fraud—Bill accepted in fraud of partnership.**—On a bill filed to obtain a rediscovery from deft. proceeding at law to recover against plff. the amount of a bill of exchange, whether deft. did not know that it was accepted by one of the partners in the name of the firm for his own private debt, & an injunction to restrain further proceedings, & that the bill of might be declared to be fraudulently

et. to grant an injunction to stay proceed-  
there was a defence at law, but as  
a prayer for relief requiring the bill of  
to be delivered up to be cancelled, &  
of debts. had not answered, & there was a  
direct charge of fraudulent collusion in the bill  
which was not sufficiently denied, they ordered  
the injunction to stay execution. -HOLDITCH v.

**3115. — Note granted under duress.]—**Where a promissory note appeared to have been signed by a young woman in her twenty-second year as surety for her step-father, in whose house she had been residing with her mother for many years previously, the ct. restrained execution against her on a judgment obtained by the payee.—**ESPEY v. LAKE** (1852), 10 Hare, 260 ; 22 L. J. Ch. 336 ; 20 L. T. O. S. 203 ; 16 Jur. 1108 ; 1 W. R. 59 ; 68 E. R. 923.

*Annotation:—***Boyd**, *Parr v. Jewell* (1855), 1 K. & J. 671.

3116. — Pending answer—Consideration not paid by holder.]—A., the holder of a bill, not having paid the consideration for it, remitted the bill to C., from whom he had ordered shipments of corn. C., hearing of A.'s insolvency, endeavoured to stop the corn *in transitu*. C. brought an action on the bill against pltf., as drawer of the bill, who applied for an injunction, on the ground that the answer would show there was nothing due from A. to C. & that A. had paid no consideration. The ct. refused to stop the action, but stayed execution till the coming in of the answer, & further order. - HOLFORD v. WERTHEMANN (1853), 22 L. T. O. S. 183; 2 W. R.

**3117. Effect of writ of extent.]**—A writ of extent binds such property as bills of exchange, while in the custody of debtor. *R. v. LAMPTON* (1818), 5 Price, 428; 146 E. R. 654.

*n* **Mentd.** *Brotnage v. Lloyd* (1847). 1 Exch. 32.

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## Part XXIII.—Securities for Negotiable Instruments.

## SECT. 1.—ASSIGNMENT OF FUNDS TO MEET INSTRUMENTS.

None unless by agreement.]—See Part XIII., Sect. 1, *ante*.

Specific appropriation.]—See Part XIII., Sect. 1, *ante*.

See, also, BANKERS & BANKING, Vol. III., pp. 248-250, 209, Nos. 723-737, 950; BANKRUPTCY & INSOLVENCY, Vol. V., pp. 705, 718, 719, 721, Nos. 6184-6188, 6255-6260, 6273.

## SECT. 2. GOODS REMITTED AND APPROPRIATED TO MEET INSTRUMENTS.

3118. Acceptance by agent Agent omitting to reimburse himself out of goods remitted—Right of agent to sue on bills. A. chartered & loaded a ship from England, consigned to a house at the Havannah, to be loaded there with produce for Trieste, out of the proceeds of the Havannah shipment, & to be consigned to B. there, on whom A. drew bills on the credit of the cargo, which B. agreed to accept, & the bills were drawn & indorsed by C., & sent to B., who accepted them under protest as to A. for the honour of C., & they were paid when due. In consequence of a disagreement between A. & the Havannah house, A. disclaimed the cargo proceeding to Trieste, & apprised B. that he had done so, directing him to attach so much of it as would be sufficient to cover what was due to him from the Havannah house on account of the Havannah shipment, & which was more than enough to repay B. the amount of the bills so accepted & paid by him. B. agreed to do so, & required a power of attorney to be sent out to him for that purpose, which was sent. The Havannah house afterwards employed B. to dispose of the cargo at Trieste on their account, & B. wrote to A., stating that he had agreed to do so on account of the large commission, whereupon A. gave him notice that he should hold him responsible. In those circumstances, B. having brought an action against C., the indorser of the bills: *Held*: (1) B. was the accredited agent of A., & had so bound himself by what he had done as to have made it his duty to act for A. as directed; (2) as he might have paid himself out of the goods which he would have had in his hands if he had done so, but had in breach of his trust neglected to do so, to the prejudice of his principal, he ought not in

conscience to be suffered to proceed in his action at law against the indorser, in which he must necessarily succeed, & then the indorser would be entitled to recover the amount from the drawer, who had an equity against plff. at law, although at law he had a clear right to recover; (3) he ought to be enjoined from proceeding further in the action, but plff. at law having a legal right against the indorser, & there being some doubt in the case of plff. in equity, with respect to the question in whose favour the balance was, the injunction should be continued on the terms of his paying the amount into ct., with such interest as would be recoverable at law. *SOLLY v. MOORE* (1820), 8 Price, 631; 140 E. R. 1310.

## 3119. Right of acceptor to bill of lading.

Plff. was in the habit of receiving goods consigned to him by L. for sale upon commission, & in order to place L. in funds for the purchase of the goods, agreed to allow L. to draw upon him. The documents of title of the goods were hypothecated to plff. to enable him to provide funds to meet the bills so drawn by L. Plff., at the request of L., arranged for the sale of a parcel of goods, to be shipped by a vessel chartered by the buyers, & L., having drawn upon plff. for that purpose, purchased & shipped the goods. The bill of lading was handed to L., but never forwarded to plff., & L.'s affairs being put in liquidation, the liquidator placed the bill of lading in the hands of defts. with instructions not to part with it until they were paid the value of the goods, & they refused to give it up to plff.: *Held*: plff. had an equitable right to the bill of lading, & was entitled to sue defts. for the wrongful detention of it. *LUTSCHER v. COMPTON D'ESCOMPTES DE PARIS* (1876), 1 Q. B. D. 700; 34 L. T. 798; 3 Asp. M. L. C. 209.

See, further, Nos. 1086, *ante*; AGENCY, Vol. I., p. 554, No. 2035; BANKERS & BANKING, Vol. III., p. 269, No. 830; BANKRUPTCY & INSOLVENCY, Vol. IV., p. 380, Nos. 3641, 3642; Vol. V., pp. 703-706, 715-718, 721, Nos. 6170, 6174-6178, 6180-6183, 6189, 6191, 6238, 6240, 6243, 6249, 6254, 6273.

## SECT. 3.—INSTRUMENTS DRAWN AGAINST SPECIFIC GOODS OR SECURITIES.

In ordinary cases.]—See Nos. 1086, 1088, *ante*.

See, also, BANKERS & BANKING, Vol. III., pp. 250-254, Nos. 738-740, 752; BANKRUPTCY &

## PART XXIII. SECT. 2.

1. Sale by payer—Breach of agreement—Rights of maker.]—Deflt. placed timber in plff.'s hands as security for payment of a promissory note, under an agreement that the timber was not to be sold before Nov. 1 without deflt.'s consent, but thereafter plff. might sell, after giving deflt. notice: plff. sold the timber after Nov. 1 without giving the notice: *Held*: though deflt. might be entitled to damages in an action of trover for a wrongful sale of the timber, he was not entitled to credit as a payment in an action on

the note for more than the proceeds of the sale, though that was less than the highest market value of the timber. *KIRKMAN v. FRANKLIN* (1859), 6 All. 101. — CAN.

2. Indorsement of note—Wrongful seizure under collateral rights of maker.]—Plff. having purchased goods from deflt. executed promissory notes, payment of these being secured by a chattel mize. on the goods. Deflt. indorsed the notes to the C. Bank leaving with them also the chattel mize. On Aug. 31, the last day of grace, deft. purporting to act under the

mize, entered plff.'s store & seized the goods & sold a portion of them: *Held*: the mize. had no right to enter before the expiration of the last day of grace. *WENTWORTH v. MURRAY* (1908), 10 W. L. R. 623; 2 Sask. L. R. 178. — CAN.

## PART XXIII. SECT. 3.

a. Goods consigned to indorser by mistake (instead of to drawer's agent—Right of recovery on bill.)—It is no defence to an action brought by plff., indorsee of a bill of exchange drawn by deflt. on his agent J., at L., & remitted

## 492 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

*Sect. 3. Instruments drawn against specific goods or securities. Sects. 4, 5, 6 & 7. Parts XXIV. & XXV. Sect. 1: Sub-sect. 1.]*

INSOLVENCY, Vol. V., pp. 700-706, 708, Nos. 6151-6191, 6203.

In cases of double insolvency. — See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 711-718, Nos. 6218-6260.

### SECT. 1.—NON-ACCEPTANCE OF DRAFT SENT WITH BILL OF LADING OR SECURITIES.

See Part XIII., Sect. 7, *ante*; SALE OF GOODS.

### SECT. 5.—VENDOR'S LIEN AND RIGHT TO STOP IN TRANSITU.

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 715, 932, Nos. 6239, 7626; SALE OF GOODS.

### SECT. 6. RIGHT OF SURETY OR MORTGAGOR TO SECURITIES ON PAYMENT.

3120. Mortgage to secure notes—Payment of mortgage & transfer of notes—Rights of mortgagor.]

R., being the holder of certain promissory notes of resp., the maker, & also of a mtge. to secure payment of same, transferred both the notes & the mtge. to applt. Applt. afterwards retransferred the mtge. to R., but retained the promissory notes, & sued resp. on one of the notes:—*Held*: (1) the assignee of the mtge. could not stand in a different character, or hold any different position

from that of the mtgee. himself, although the mtgor. was no party to the assignment; (2) every mtgor. had a right to have a reconveyance of the mortgaged property upon payment of the money due upon the mtge., & every mtgee. was charged with the duty of making such reconveyance upon such payment being made; (3) resp. was entitled to an injunction to restrain proceedings on the promissory note.—*WALKER v. JONES* (1806), L. R. 1 P. C. 50; 3 Moo. P. C. C. N. S. 397; 35 L. J. P. C. 30; 14 L. T. 686; 12 Jur. N. S. 381; 11 W. R. 484; 16 E. R. 151, P. C.

*Annotations*:—*Fidd.* *Rourke v. Robinson*, [1911] 1 Ch. 480. *Reid.* *Kinnaird v. Trollope* (1888), 39 Ch. D. 636; *Graham v. Seal* (1918), 88 L. J. Ch. 31. *Mentd.* *Re Oxford & Canterbury Hall Co.* (1870), 5 Ch. App. 433; *Rudge v. Riehens* (1873), L. R. 8 C. P. 358.

See, generally, Part XIV., Sect. 12, sub-sect. 5, *ante*.

### SECT. 7.—RIGHTS OF HOLDER AGAINST SURETY.

3121. Guarantee of bank to provide funds to meet bills—Bankruptcy of drawer & acceptor.]—M. drew bills upon the A. co., & a banking co., under an agreement with M., guaranteed the acceptors, also a co., that they would supply them with funds to meet the bills. S. discounted the bills, being informed by M. of the guarantee of the banking co., but he gave no notice to the banking co. or to the acceptors. Afterwards the banking co. & the acceptors suspended payment & were wound up. M. also executed a deed of composition with his creditors:—*Held*: S. had no equity to rank as a creditor of the banking co. in respect of the guarantee. — *Re BARNED'S BANKING CO., Ex p. STEPHENS* (1868), 3 Ch. App. 753; 19 L. T. 198; 16 W. R. 1162, L. JJ.

*Annotation*:—*Appld.* *Re General Rolling Stock Co., Ex p. Alliance Bank* (1869), 4 Ch. App. 429.

## Part XXIV. — Agreements Collateral to Negotiable Instruments.

Irregular instruments.]—See Part II., Sect. 5, *ante*.

Agreements to accept.]—See Part VI., Sect. 7, Part XIII., Sect. 7, *ante*.

Conditional delivery.]—See Part VIII., Sects. 3, 4, *ante*.

Renewal & substitution of instruments.]—See Part X., Sect. 2, Part XIV., Sect. 11, *ante*.

Lien on instruments.]—See Part X., Sect. 4, sub-sect. 2, *ante*.

Agreement to provide funds to meet instruments.]—See Part XIII., Sect. 8, *ante*.

Securities for instruments.]—See Part XXIII., *ante*.

to plff. by his agent at St. J. in payment for moneys collected, that the bill was drawn against a ship & cargo, which the owners had consigned to plff. instead of sending them to J., deft.'s agent, as had been originally intended, plff. not having been privy to the arrangement, & having in fact applied the proceeds of the ship & cargo to the payment of other demands which he had against the owner.—*HAYTON v. WILMOT* (1813), 3 Kerr, 324.—*CAN.*

### PART XXIII. SECT. 7.

b. Note guaranteed by builder's lien—Right to benefit of lien.]—The holder of a note guaranteed by a builder's lien, can, in proceeding to recover on the note, demand that the existence of this claim be recognised in his favour.—*HANCOCK JACQUES CARTIER v. PICARD* (1900), Q. B. 18 & C. 302.—*CAN.*

c. Guarantee of acceptance—Refusal to accept—Bankruptcy of drawer.]—A. drew three bills, at intervals, on a house in L., each bill

at 60 days' date; he successively discounted them with a bank in A., producing along with each, a relative letter by a third party, "guaranteeing its regular acceptance"; the bank's correspondents in L. did not present any of the bills for acceptance until the period of payment, the drawer failed before the first fell due, & the drawers refused to accept:—*Held*: the cautioner was not liberated, but remained liable under his guarantee.—*NATIONAL BANK OF SCOTLAND v. ROBERTSON* (1834), 14 Sh. (Cl. of Sess.) 402.—*SCOT.*

## Part XXV.—Stamp Duties.

## SECT. I.—WHAT INSTRUMENTS ARE CHARGEABLE.

1882 Act, s. 97 (3) (a).

*In considering the cases set out in Sect. regard must be had to their date, the Act*

## SUB-SECT. I. BILLS OF EXCHANGE AND OTHER INSTRUMENTS PAYABLE ON DEMAND.

What instruments amount to bills of exchange, see Part II.

**3122. Draft payable to order.** Requesting payee on account.—A draft in the following words: "N. will much oblige W. by paying to J. or order £20 on his account," is a bill of exchange, and may be given in evidence without a stamp. If such draft, though taken without objection by the party at the time, any of a subsisting debt. *RURY v. WENN* (1704), 1 Exp. 130, N. P.

**3123. Draft on bank—Post-dated.** Delivery before day of date.—A draft on a banker post-dated

intended to be used till that day, requires to be stamped by 31 Geo. 3, c. 25. *ATLAS v. KEE* (1801), 1 East, 435; 102 E. R.

**3124. Draft of building society.** Payable to order

in hand enough to pay. The draft, when presented, is not a bill of exchange, but a draft, and is not chargeable with stamp duty.

drafts usually paid a few days after the date.

to the society for the purpose of interest on money deposited, and if the society did not

drafts were liable to stamp duty as cheques or orders for the payment of money, & were within the exemption in 10 Geo. 4, c. 56, which was to be regarded as

drawn by an officer of

or by a member of the society, payable to

*Ex. A-G. v. GILPIN* (1871), L. R. 6 Exch. 193; 40 L. J. Ex. 134; 19 W. R. 1027.

## I. SUB-SECT. I.

**31** Draft in drafts

**3125. Coupon on foreign bonds.**—In 1881 the Hungarian Govt. issued a number of 1

at the offices of R. & Sons. The bonds were of 100, & were provided with coupons for ten years, & the Hungarian Govt. would deliver of the talon, after July 1, another talon. In

with coupons for the ensuing of interest were issued, & one of

on Jan. 1, 1892, was stamped with stamp as a bill of exchange payable on demand: *Held*: the new coupon was a bill of exchange within Stamp Act, 1870 (c. 97), s. 48, & it did not come within the exemption in the sched. to the Act, or in Revenue Act, 1889 (c. 42), s. 10, as a coupon or warrant for interest paid with any security, & was as a bill of exchange.

142; 70 L. T. J. P. 300; 42 W. R. 10 T. L. R. 36; Jo. 363; 10 H. 20

246

**3126. Banker's order to Bank of England.**—Transferring money in account To account of commissioners of Customs. A banker's written order to the Bank of England to transfer a sum of money from his account with the Bank of England to the account of the commissioners of Customs with the Bank of England, whether given by the banker to a customer in exchange for his duty on goods, & given by the commissioners of Customs, or in

"bill of exchange" within demand" within Act, 1891 (c. 30), s. 32, is not a bill drawn for the sole purpose of to an account of

"bill of exchange" within demand" within Act, 1891 (c. 30), s. 32, is not a bill drawn for the sole purpose of to an account of

EXERCISE COMMISSIONERS (1890), 1 Q. B. 542; 65 L. J. Q. B. 2; 74 L. T. 209; 60 J. P. 404; 44 W. R. 510; 1 T. L. R. 283; 40 Sol. Jo. 403, C. A.

**3127. Order to bank for sums payable to bearer more than ten miles distant from bank.**—

M., with B. & others, were joint owners of a bond conditioned to answer for any sum which might become due from M. to a person in Scotland, with whom he had obtained a loan according to the Scotch system of

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*Sect. 1.—What instruments are chargeable: Sub-  
sect. 1.]*

distant from the bank, but dated, contrary to the fact at a place within that distance, & also post-dated, being in both respects contrary to Stamp Act, 1815 (c. 184), s. 13. The mode of drawing was known by the bankers. M. having overdrawn the bank to the amount of £4,378, an action upon the bond was brought against S. by the bank, to recover the amount:—*Held*: no debt had been incurred, & the parties were not liable upon the bond.

The whole question arises out of, & turns upon Stamp Act, 1815, s. 13. I do not consider that these are drafts or orders for the payment of money at all. They are directions to send money to the party who either has it in the bank, or takes credit from the bank; they are not negotiable instruments, & they are not issued. They do not come within the description of instruments requiring a stamp, & they do not fall in any way within sect. 13 (LORD BROUGHAM).—*SWAN v. BANK OF SCOTLAND* (1835), 10 Bl. N. S. 627; 1 Deac. 746; 2 Mont. & A. 656; 6 E. R. 231, H. L.

**3128. Order for payment of money—Out of particular fund Proceeds of sale of goods.]—**Where C. was directed by a letter from B. to pay out of the proceeds of his goods then unsold, in his, C.'s hands, a certain sum of money to D., which C. consented to do, by letter to D., which letter was stamped with an agreement stamp, & the letters were given in evidence to prove that the money was paid by order of B.:—*Held*: they did not amount to an agreement between B. & C., & the stamp was improper, & the order itself for payment should have been stamped, as being an order for the payment of money out of a fund, which might or might not be available within Stamp Act, 1815 (c. 184), sched., part 1.

It was the object of the legislature in framing this provision to treat as promissory notes & bills of exchange, & to subject to a stamp duty such instruments as, being payable on a contingency or out of a particular fund, could not in strictness fall under that denomination. This order comes as well within the spirit as the letter of the Act, & ought to have been stamped with the appropriate stamp (LORD ELLENBOROUGH, C.J.).—*FIRBANK v. BELL* (1817), 1 H. & Ald. 36; 106 E. R. 14.

*Annotations:—*Field, *Hutts v. Swann* (1820), 2 Brod. & Bing. 78. *Distd.* Jones v. Simpson (1823), 3 Dow. & Ry. K. B. 545; Hutchinson v. Heyworth (1838), 9 Ad. & El. 375. *Held.* Braybrooke v. Meredith (1843), 13 Sim. 271; Potter v. Jones (1861), 6 H. & N. 529.

**3129. ———.]—**A letter from A. to B. requesting him to pay C. & Co., or their order, £600 out of the first proceeds of a stock of gunpowder, then in the hands of B., & to charge same to the account of A., although followed by a subsequent correspondence between the parties:—*Held*: to require a stamp, as an order for the payment of money within Stamp Act, 1815, & an agreement stamp affixed on payment of a penalty was improper.—*HUTTS v. SWANN* (1820), 2 Brod. & Bing. 78; 4 Moore, C. P. 484; 129 E. R. 887.

*Annotations:—*Consd. Green v. Davies (1825), 4 B. & C. 255. *Distd.* Wise v. Charlton (1836), 4 Ad. & El. 156; Hutchinson v. Heyworth (1838), 9 Ad. & El. 375. *Held.* Braybrooke v. Meredith (1843), 13 Sim. 271.

**1. ———.]—**A draft was in these terms, "On demand pay £4. to J." signed on a 1d. stamp:—*Held*:

a document of the class exempted from stamp duty by Stamp Act, 1853, though not containing the words "to

the bearer" or "to order."—*MUNRO v. TEMPLETON & CO.* (1864), 36 Be. Jur. 747.—SCOT.

**3130. ——— Proceeds of auction.]—**L. being indebted to pltf., & about to sell his property by auction, gave an order in writing signed by him, & addressed to deft., the auctioneer, "to pay to pltf., out of the produce of the sale of his goods & furniture, £200 & interest, from June 23 last, due to pltf. on warrant of attorney, & also £110 due to pltf. for goods sold, for which several sums the receipt of pltf. to be deft.'s discharge":—*Held*: the order required an inland bill stamp.—*EMLY v. COLLINS* (1817), 6 M. & S. 144; 105 E. R. 1196.

*Annotations:—*Distd. Hutchinson v. Heyworth (1838), 9 Ad. & El. 375. *Held.* Braybrooke v. Meredith (1843), 13 Sim. 271.

**3131. ——— Proceeds of consignment of goods—Agreement by consignee to pay over full amount.]—**A. having consigned goods to B., sent him the following order: "Pay to C. the proceeds of a shipment of goods, value about £2,000, consigned by me to you." B., by writing, consented to pay over the full amount of the net proceeds of the goods:—*Held*: neither of the instruments required such a stamp as the Stamp Acts imposed on bills, drafts, or orders for the payment of money.—*JONES v. SIMPSON* (1823), 2 B. & C. 318; 3 Dow. & Ry. K. B. 545; 2 L. J. O. S. K. B. 22; 107 E. R. 402.

*Annotations:—*Consd. Crowfoot v. Gurney (1832), 2 Moo. & S. 473. *Distd.* Hutchinson v. Heyworth (1838), 9 Ad. & El. 375; Braybrooke v. Meredith (1843), 13 Sim. 271.

**3132. ———.]—**H. & J. being indebted to their bankers, R. & Co., wrote the following letter to defts., who were agents through whom H. & J. were accustomed to dispose of their manufactured goods: "We now authorise you to pay to R. & Co., after you have paid yourselves the balance we owe you from the net proceeds of our shipments to your foreign establishments to the present date, one half of the remainder of the proceeds of the shipments, provided same shall not exceed £5,000"—*Held*: that was not an order which required to be stamped as a bill of exchange.—*HUTCHINSON v. HEYWORTH* (1838), 9 Ad. & El. 375; 1 Per. & Dav. 266; 1 Will. Woll. & H. 730; 8 L. J. Q. B. 17; 112 E. R. 1254.

*Annotation:—*Held. Belcher v. Capper (1842), 4 Man. & G. 502.

**3133. ——— Order from purchaser to his agent to pay vendor.]—**Pltf. sold goods to B., taking his acceptances for the price, & sent them to deft. as B.'s agent, who consigned them to his partners abroad for sale. While the acceptances were running, pltf., doubting B.'s solvency, required further security, whereupon it was agreed between pltf., B., & deft., that B. should write & deliver to deft. a letter authorising him, out of any remittances he might receive against the net proceeds of the above consignments, to pay the acceptances as they became due, if not honoured by him, B., previously to the receipt of such net proceeds. The letter was delivered to deft., & he assented to the terms of it.—*Held*: the letter did not require a stamp as an inland bill.—*WALKER v. ROWTRON* (1842), 9 M. & W. 411; 11 L. J. Ex. 173; 152 E. R. 174.

*Annotations:—*Distd. Parsons v. Middleton (1847), 6 Haro. 261. *Held.* Griffin v. Weatherby (1863), L. R. 3 Q. B. 753. *Held.* Yates v. Hoppe (1859), 9 C. B. 541; Liveridge v. Broadbent (1859), 4 H. & N. 603; Noble v. National

Discount Co. (1860), 5 H. & N. 323; Greenway v. Atkinson (1881), 29 W. R. 560.

**3134. ——— Balance at bankers—Immediate delivery of order to payee.]—**An order signed by A., addressed to his bankers, directing them, out of the balance due to him on the final arrangement of his account, to pay to B. a certain sum, which order was forthwith placed in the hands of B., who, accompanied by A., immediately proceeded to the banking-house & delivered it to the bankers:—*Held*: (1) an instrument requiring a bill stamp within Stamp Act, 1815 (c. 184); (2) although the intention of A. & B. was that the order should be forthwith delivered to the bankers, yet the fact that the order was, according to the agreement, delivered by A. to B., the payee, brought it within the provisions of the Act, applicable to an instrument of that character. —*PARSONS v. MIDDLETON* (1847), 6 Harv. 201; 67 E. R. 1104.

*Annotated.* *Reid*, Diplock v. Hammond (1854), 2 Eq. Rep. 738.

**3135. ——— Amount due on contract.]—**C. having contracted to build twelve houses for S., applied to G. for timber, which was supplied on C. giving an authority in writing to S. to pay certain sums at certain times to G. out of the amount due to him, C., on his contract. This was signed by C., who again applied to G. for more timber, & G. communicated that to S., who represented to G., as G. alleged, that he had got such order. S. paid part of the money at the special request of C., who went abroad & assigned all his property to D. G. thereupon filed a bill against S., setting up the written order as an equitable assignment of the debt due on the contract with C. The order was unstamped: *Held*: (1) the order being admitted by the answer as signed by C., it was not necessary to produce it; (2) if compellable to produce it the ct. would have been obliged to reject it, being an order for payment of money out of an amount due, & not being stamped. —*McGOWAN v. SMITH* (1850), 26 L. J. Ch. 8; 4 W. R. 600.

*Annotated.* *Dund.* *Re Adams, Ex p. Sheldard* (1873), L. R. 17 Eq. 109. *Mentid.* Greenway v. Atkinson (1881), 29 W. R. 560.

**3136. ——— Before the commencement of their liquidation two debtors had given to one of their creditors a letter addressed to a co., for whom they were executing a contract, requesting the co. to pay to the creditor £200 "out of money payable to us on the completion of our contract":—***Held*: the letter was inadmissible in evidence, as being an unstamped bill of exchange. —*Re ADAMS, Ex p. SHELLARD* (1873), L. R. 17 Eq. 109; 43 L. J. Bcy. 3; 29 L. T. 621; 38 J. P. 280; 22 W. R. 152.

*Annotated.* — *H.F. Buck v. Hobson* (1878), 3 Q. B. D. 586. *Fold.* *Re Whitting, Ex p. Howell* (1878), 48 L. J. Bcy. 46. *Reid.* Fisher v. Calvert (1879), 27 W. R. 591.

**3135 L. Order for payment of money—Out of particular fund—Amount due on contract.]—**A. was employed by B. to execute work. A. received various payments on account, he addressed to B. this letter: "Pay bearer £40, & charge same against my account of work." B. signed the letter in token of acceptance of the order contained in it:—*Held*: not being written on stamped paper, was of no legal effect. —*ILLIS v. GILL* (1836), 14 M. (Ct. of Sess.) 366.—*SCOT*.

**3136 H. ———**—A. placed a bill drawn by him on B. in favour of

C. in C.'s possession, & thereafter, by letter, ordered C. to pay a creditor £100 out of the amount of the bill which, the letter stated had been placed in C.'s hands to pay the creditor:—*Held*: the letter was not an order or bill requiring a stamp. —*BRUCE v. MARSHALL* (1843), 13 Ac. Jur. 440.—*SCOT*.

**3139 L. ——— Assignment of debt.]—**Order for payment as follows:—"We do hereby authorize & request C. to pay to A. £200, due from C. to us for goods sold & delivered by us to C. &

**3137. ———**—J.—T. contracted with J. to build for him a steam launch for £80, the price to be paid when the boat should be completed & delivered. T., after receiving £40 on account, addressed a letter to J. as follows: "I hereby assign to R. & Son the sum of £40 now due or that may hereafter become due in respect of the steam launch, which I am building for you":—*Held*: T.'s letter was not an order for the payment of money, & might be given in evidence on payment of the proper stamp duty & penalty. —*BUCK v. ROUSON* (1878), 3 Q. B. D. 680; 48 L. J. Q. B. 250; 30 L. T. 325; 26 W. R. 804.

*Annotated.* *Dund.* *Re Whitting, Ex p. Howell* (1878), 48 L. J. Bcy. 46. *Fold.* Fisher v. Calvert (1879), 27 W. R. 591. *Dund.* London Clearing Bankers' Committee v. L. R. Comrs. (1896), 1 Q. B. 542. *Mentid.* Walker v. Bradford Old Bank (1841), 12 Q. B. D. 511. Mercantile Bank of India v. Evans (1898), 19 L. T. 490. Re Gainsborough, Ex p. Trustees (1919), 88 L. J. K. B. 470.

**3138. ——— Amount due under will.]—**M. being indebted to pttf., gave them an unstamped document addressed to C., who was trustee of his father's will, in the following words: "I hereby authorize & direct you to pay to pttf. or their order £140 out of the money now due or hereafter to become due to me under the will of my late father, & before making any payment to me thereout":—*Held*: such document was not a bill of exchange under Stamp Act, 1870 (c. 97), s. 48, & could be produced in evidence on payment of the proper duty & penalty. —*FISHER v. CALVERT* (1879), 27 W. R. 301.

*Annotated.* *Mentid.* *Re Whitting, Ex p. Hall* (1879), 10 Ch. D. 613.

**3139. ——— Assignment of debt.]—**A., being indebted to B., & B. to C., B. by letter requested A. to pay C. the balance due to him, B., & stated that C.'s receipt should be a sufficient discharge:—*Held*: that was not a bill of exchange, or requiring, within Stamp Act, 1815 (c. 184), a stamp as such. —*CROWTHER v. GUNTER* (1832), 9 Bing. 372; 2 M. & S. 473; 2 L. J. C. P. 21; 131 E. R. 655.

*Annotated.* *Reid.* Hutchinson v. Heyworth (1824), 9 Ad. & E. 375. *Mentid.* Hunt v. Argles (1844), 7 C. & M. 391. Dudgeon v. Gaudet (1857), 1 De G. M. & G. 763; 13 Bradb. v. Broadbent (1859), 4 H. & N. 603.

**3140. ———**—A being a creditor of B. for £305, & being indebted to C. to a like amount, delivered to C. an instrument addressed to B. in the following form: "I hereby authorize you to pay C. £305, being the amount of my contract, C. having advanced me that sum":—*Held*: such instrument did not require a bill stamp as an order for payment of money. —*DUPLOCK v. HAMMOND* (1854), 5 De G. M. & G. 320; 2 Eq. Rep. 738; 23 L. J. Ch. 550; 23 L. T. O. S. 181; 2 W. R. 500; 43 E. R. 893, L. J.

*Annotated.* *Consol.* *Re Adams, Ex p. Sheldard* (1873), L. R. 17 Eq. 109. *Mentid.* *Re Whitting, Ex p. Hall* (1879), 10 Ch. D. 613. *Brundage v. Dunlop Rubber Co* (1905), A. C. 154.

the receipt of A. for the same shall be a good discharge":—*Held*: a stamp was unnecessary. —*ADAMS v. MINNAN* (1883), 14 L. R. Ir. 160.—*IR.*

**Assignment of bond fund.]—**X., who was debtor of C. gave him a memorandum in the following form:—"To W. trustee please pay to C. £300." It was signed by X. & bore a 1s. stamp. —*Held*: the document was a bill of exchange within Stamp Duties Act, 1870, & the stamp affixed was sufficient. —*CARR v. KING* (1857), 14 V. L. R. 22.—*AUS.*



*1.—What instruments are chargeable :*

**3141. — Money due under contract.]—**

D. having a contract to erect buildings for deft., & being indebted to B. in £23, at the request of the agent of the latter, verbally promised to give B. an order on deft., & sent B. the following document to deft. : " Please to pay £23 to B. & to my account, D." Deft., on seeing the order, signed the following document, & delivered it to B. : " I agree to pay you cash £23, as per order of D., if I have so much cash left on hand on completion of his contract." & deft. subsequently paid the £23 to B. : *Held* : the order was inadmissible in evidence for want of a stamp as a bill of exchange. *POTT v. LOMAS* (1861), 6 H. & N. 529 ; 30 L. J. Ex. 210 ; 3 L. T. 816 ; 158 E. R. 217.

**3142. Authority to pay third party.]—**

A note, written by a creditor, at the foot of an account, requesting debtor to pay that account to A., & which the creditor delivered to A., for the of his getting in the money for the creditor : *Held* : not a bill of exchange, or order for payment of money within the Stamp Act, 1815 (c. 184). *NORDIS v. SOLOMON* (1840), 2 Mood. & R. 266, N. P.

**3143. Authority to third party to pay.]—**

In 1842, W. & S., type-founders, were indebted to G., plff.'s testator, in £6,000, for money lent. Deft., who was a member of the firm of E. & S., printers, had been accustomed to purchase of W. & S. large quantities of type, for which quarterly accounts used to be sent, & it was expected that those dealings would be continued. W. & S. being applied to by G. for payment, delivered to him the following order, signed by them, & directed to deft. : " We hereby authorise you to pay on our account, to the order of G., at the following periods, deducting the from the quarterly accounts for type :—£1,000, Nov. 11, 1844, £1,000, Nov. 11, 1845, £1,000, Nov. 11, 1846, £1,500, Nov. 11, 1847,

h. : " Having received the £1,000 from W. & S., I undertake to make you as above stated." *Held* : the order did not require to be stamped as a bill of exchange.

The letters do not require a bill of exchange or promissory note stamp ; they do not require an on that the money all to be paid, but merely authorise the deft. to do so. *HAMILTON v. POLLOCK* (1840), 4 Exch. 200 ; 14 L. T. O. S. 108 ; 154 E. R.

*Annotations.* *Mead.* *Liversidge v. Liversidge* (1840), 4 H. & N.

29 W. R.

**3144. To be discharged on settlement of two estates, who were in & profits of only one of**

them, advanced a further sum to the mtgor. upon the same securities, but the rents & profits of the one estate not being sufficient to keep down the interest on the entire mtge-money., the mtgor. wrote the following order to M., who in fact was the tenant of the other estate, which consisted merely of a prebend rectory, tithes & glebe lands, etc. : " Please to remit to H., W., & T., £700, & charge it in account with me in settling for the present year's tithes of the prebend of L." H., W., & T., the solrs. of the mtgees., sent that order in a letter to M., whom they treated as the receiver of the mtgor., & stated that, if the £700 was remitted, they would not require to be put in possession of the receipt of the tithes. M. in his answer, not setting the parties right as to his being tenant of the tithes, said that he had not the money at that time, but held out a prospect of paying it in the course of 9 days. In the meantime, he received the tithes which were about to become due, & applied them in payment of a debt which he alleged to be due to him from the mtgor. Upon a bill filed by the mtgees. against M. for payment of £700, & an account :—*Held* : the above order from the mtgor. upon M. was such an order as within Stamp Act, 1815 (c. 184), sched. 1, required a stamp, & the want of such was a fatal objection.—*BRAYBROOKE (LORD) v. MEREDITH* (1843), 13 Sim. 271 ; 12 L. J. Ch. 289 ; 7 Jur. 144 ; 60 E. R. 106.

*Annotation.*—*Reid.* *Diplock v. Hammond* (1854), 2 Sm. & G. 141.

**3145. — Request to tenant to pay rent to bank—Receipt of bank to operate as discharge.]—**  
A. obtained an advance of £200 from his bankers, & gave them an unstamped letter addressed to his tenants, directing the tenants, when their rent became payable, to pay £200 to the bankers, for which he would accept their receipt as so much of the rent discharged. *Seemle* : the letter was an order for payment of money, & as such, being unstamped, was inadmissible in evidence.—*Re WHITTING, Ex p. HALL* (1878), 10 Ch. D. 615 ; *sub nom. Re WHITTING, Ex p. ROWELL*, 48 L. J. Bey. 46 ; *affd.* on other grounds (1879), 10 Ch. D. 100. C. A.

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*v. Dunn* (1885), 20 Ch. D. 887 ; 35 Ch. D. 681 ; 10 L. J. (1904) 1 K. B. 387.

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**3146. — Made under direction of Court of Chancery—Order to be made by two persons signed by one only.]—**  
J. by indenture, assigned to plff. a ninth part of his share in the residue of the estate of T., deceased. By an order of July 29, 1842, made in a suit in Ch., of P. v. N., the ct. ordered defts. in that suit to retain £250, being part of the produce of J.'s share of the residuary estate of T. to be paid to such person as A. & J. should jointly

It was afterwards agreed between the that £50, to be considered as part of the £250, should be paid by deft. to the solrs. for J. & plff. An action having been brought to recover the £50, plff. tendered in evidence the

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Act, 1891.—*MIRZA v. BETT*  
20 N. Z. L. R. 367.—N.Z.



following document: "To the exors. of T. deceased. P. v. N. Gentlemen, We do hereby authorise & require you to pay to P., or his order, £250, being the amount directed by the order of July 29 last, to be paid to our order." The document was signed by J. only & was unstamped:—*Held*: as it was not a bill of exchange, it was admissible in evidence without a stamp. —*Russell v. Powell* (1845), 14 M. & W. 418; 14 L. J. Ex. 269; 5 L. T. O. S. 280; 153 E. R. 538.

*Annotation*:—*Held*, *Ellison v. Collingridge* (1850), 9 C. R. 570.

#### SUB-SECT. 2.—CHEQUES.

**3147. Cheque drawn on unstamped paper.**—Where the paper, on which a cheque was drawn, was unstamped:—*Held*: the cheque was void in its creation, & a mere blank, & the ct. had not legal optics to see its existence. —*Borrodale v. Middleton* (1809), 2 Camp. 53, N. P.

**3148. — Subsequently stamped by payee.**—A. gave B. a cheque on a blank sheet of paper for the price of a horse. B. put a stamp on it & negotiated it to C., a *bona fide* holder for value. A. stopped the cheque, on the ground that the horse was unsound:—*Held*: under Stamp Act, 1870 (c. 97), as the stamp was put on neither by the drawer nor by the banker, on whom it was drawn, C. could not recover on it against A. —*Horne v. Cathie* (1890), 6 T. L. R. 202.

**Post-dated cheque.**—See Part IV. S. 1. 2, *ante*.

#### PART XXV. SECT. 1., SUB-SECT. 2.

**3147. Cheque drawn on unstamped paper.**—A private citizen of Q. who draws a cheque upon the C. Bank of A. in respect of a current account in that bank, is, under Stamp Act, 1891, Q. liable to a penalty should he draw cheque without a sufficient stamp. —*Harvey v. Scott* (1911), 19 C. L. R. 361.—AUS.

**3148. — Stamping after execution.**—*Courts & officers of the ct. are expressly prohibited by Stamp Duties Act, 1868, s. 47, from stamping cheques after execution.* —*Bank of Australasia v. Reid* (1868), 1 C. A. 91.—N.Z.

**3149. — Stamping after issue.**—Bank cheques are liable to stamp duty as bills of exchange & cannot be stamped after issue. —*McLellan v. Millar* (Turner's Exemption) (1861), 36 No. Jor. 452.—SCOT.

#### PART XXV. SECT. 1., SUB-SECT. 3.

**3149. Distinguished from agreement.**—A document set forth that there was no stamp at hand, & contained an acknowledgment of debt, with a promise to pay when required, & grant a sufficient stamped bill, if called for:—*Held*: not a mere agreement, but a promissory note within Stamp Act, & void for want of a stamp. —*Mackintosh v. Stewart* (1830), 6 Sh. (Ct. of Sess.) 139; 5 Fac. Coll. 593.—SCOT.

**1. Distinguished from proposal.**—*For loan.*—A letter containing a request to borrow money promising that it should be repaid with interest on a certain day is not liable to stamp duty, as a promissory note, it is a

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#### SUB-SECT. 3.—PROMISSORY NOTES AND OTHER LIKE PROMISES.

What instruments amount to promissory notes generally, see Part II. Sects. 1, 4, *ante*.

**3149. Distinguished from agreement.**—The following document: "Borrowed of J. £300 to account for on behalf of the A. Club, at blank months' notice if required":—*Held*: not a promissory note.

A similar instrument with the blank filled up with the word "two":—*Held*: not a promissory note.

This is in substance an agreement, & not a promissory note (Pollack, C.B.). —*Whit v. North* (1810), 3 Exch. 680; 18 L. J. Ex. 316; 154 E. R. 1022.

**3150. What note must contain.—Promise to pay definite sum.—With no stipulations.**—In order that a document may be a promissory note within Stamp Act, 1870 (c. 97), s. 10, it must substantially contain a promise to pay a definite sum of money & nothing more. A document containing a promise to pay money as part of a contract containing other stipulations would not be a promissory note within the Act.

By an instrument, described as a policy of insurance, after reciting that F. was desirous of being insured with applt. corps., & that there had been paid to the corps. £9 17s. 4d., being the agreed premium for such assurance, it was witnessed that the corps. did thereby guarantee to the assured payment of £100 on May 18, 1867, provided that, if the assured should be desirous at any time of surrendering the policy, the corps. would allow him to the surrender value thereof

any note within Stamp Act, 1890, must be a document substantially containing a promise to pay a sum of money, & nothing else. —*Jackson v. Brown* (1891), 17 V. L. R. 131.—AUS.

**3150. —**—A letter written by an uncle to the father of legatee, stating: "With reference to the legacy left by A. to your children, I hereby promise to pay said legacy to the children, at M., on a proper discharge being granted me for same."

—*Held*: though not a promissory note it was an obligatory document, requiring a stamp. —*Hudson v. Hume* (1861), 36 No. Jor. 450.—SCOT.

**3150. —**—A. wrote to B. "It is my intention to see you paid as soon as the money" due under a particular bond "is handed over to me. I have instructed C. to retain sufficient money to settle your account." —*Held*: the letter being entirely indefinite as to the sum to be paid, was not a promissory note within Stamp Act. —*Henderson v. Brown* (1864), 22 H. (Ct. of Sess.) 225; 21 No. L. R. 611.—SCOT.

**3150. —**—A letter in these terms: "As desired by you I hereby put in writing my promise to you, namely, that you are to receive out of my estate, after my decease, £15,000 & I hereby authorize this." —*Held*: not a promissory note within Stamp Act, 1891, because the grantor did not bind himself to pay a sum of money. (2) because the document contained something more than a stipulation that money was to be paid, embodying as it did a mandate

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more proposal. —*Donohue v. New-Hampshire v. Almaraz Moreshead* (1890), 1 L. R. 13 Lord 689.—IND.

**m. —**—A letter reciting a request for a loan, calling on the addressee to pay the amount to bearer & continuing, "This sum I shall repay with interest . . . & get back this letter. I request you will not neglect to pay the amount on the strength of this letter," is a promissory note within Stamp Act, & not a mere proposal for a loan. —*Chavasse v. Armes* (1891), 1 L. R. 16 Mod 283.—IND.

**o. — For partnership.**—An unstamped letter in these terms: "I would propose you pay £20 in two instalments, & after two instalments of £10. This will give you one fifth of the interest in the business, & I will agree to pay you back all you put into the co. with 5 per cent added at the end of five years, if you desire it."

—*Held*: the document was in substance a proposal for a partnership, the promise to pay being merely incidental to the main purpose, & it was liable to stamp duty as an agreement, & not as a promissory note. —*Thomas v. Bull* (1891), 21 No. L. R. 18.—SCOT.

**3150. What note must contain.—Promise to pay definite sum.—With no stipulations.**—The term "Promissory Note" in Stamp Duties Act, 1870, s. 31, includes only documents, the contents of which amount substantially to a promise to pay a definite sum of money & nothing else. —*Hawkins v. Troup* (1890), 17 V. L. R. 136.—AUS.

**3150. —**—A promise

1.—*What instruments are chargeable: Sub-sect. 8.]*

as on May 18 last preceding the date of his notice to surrender, such value to be fixed according to the tables of the corpn. for the time being in force with reference to surrenders:—*Held*: the instrument was not liable to stamp duty as a promissory note within s. 40.—**MORTGAGE INSURANCE CORPN. v. INLAND REVENUE COMRS.** (1888), 21 Q. B. D. 352; 57 L. J. Q. B. 630; 36 W. R. 833; 4 T. L. R. 710, C. A.

*Others*:—**Consd.** **Smith v. Dean** (1900), 69 L. J. Q. B. 331; **Hodgkins v. Simpson** (1908), 25 T. L. R. 53.

**3151. Promise to pay—"Or cause to be paid."**  
—A note, whereby a party promises "to pay or cause to be paid" £130, is a promissory note, & may be declared on as such, & does not require  
C. & P. 238, N. P.

**3152. Promise not absolute—Contract of indemnity.**—An instrument in the following form: "In consideration of your advancing to M. & H. £250 on their joint & several promissory note, I undertake to pay £250 on demand, should their note not be met at maturity":—*Held*: not a promissory note within Stamp Act, 1891 (c. 39), s. 33. **DICKINSON v. BOWER** (1897), 14 T. L. R. 140.

**3153. Document promising to pay fixed amount—On happening of event.**—Deft. & plff. being in treaty with regard to a lease to be granted by ft. signed & gave to plff. the following it: "I, D., promise to pay Y., on his the lease of the Castle Inn, Plymouth, £150. D."—*Held*: the document did not require to be stamped as a promissory note.—**YEO v. DAVE** (1885), 53 L. T. 125; 33 W. R. 739; 1 T. L. R. 506, C. A.

Q. B. D. 3  
69 L. R. 331.

—*Appl.* sold a lease of a to resp. Resp. having failed to an order of justices for a transfer to him of the ence, it was verbally agreed between the s that applt. should carry on the business the licence till the next transfer day, & that should pay him £25 for doing so. A] to allow payment of that sum to s or till the transfer day if resp. would give agreement in writing. Resp. thereupon following document & handed it to a] "On the day of the transfer of the licence I

the  
case  
1883  
after **Tarwin**, [1916] 1 B. T.  
T.

**3152 I. Promise not**

F. 212, & I will be answerable for the repayment of same after six months" is not a promissory note within Stamp Act, 1891, s. 33. **MILNE v. BERT**, [1901] 20 N. Z. L. R. 367.—N.Z.

**3153 II.**—*Held*: an instrument in this form, "Good to P. for £330 on demand," was not a promissory note requiring a stamp.—**PAINE v. McLENNAN** (1872), 22 C. P. 236, 245.—CAN.

**3153 III.**

a of  
did a  
within Stamp Act,  
it did not require any stamp.  
r. **TODD** (1897), 34 Sc. L. R.  
SCOT.

**3152 IV.**—*A writing as follows* "This is to certify that I have to pay to you £300 or interest at the rate of 34 per cent."—*Held*: not a promissory note within Stamp Act, 1891, s. 33, being of the nature of a record of an obligation constituted against the grantor rather than a direct expression of a promise to pay such as the Act contemplates.—**SMITH v. ELLIOTT** (1912), 1 No. L. T. 281.—SCOT.

**3157 I. Instrument acknowledging debt**

to pay you £25":—*Held*: the document was liable to stamp duty, as a promissory note within Stamp Act, 1891 (c. 39), s. 33.

The definition of "promissory note" in s. 33, & in the corresponding sect. of the former Stamp Act, 1870 (c. 97), has been so drawn as to include documents which are not usually regarded as promissory notes (**GRANTHAM, J.**).

The document which has been drawn up does not contain all the terms of an agreement. It shows only an obligation on the part of resp. to pay a sum of money to applt. at a certain time. It is thus a "promissory note" within s. 33. It is not a promissory note for any purposes other than those of that Act (**CHANNELL, J.**).—**SMITH v. DEAN** (1900), 69 L. J. Q. B. 331; 81 L. T. 755, D. C.

**3155. Instrument acknowledging debt.**—An ment, bearing a 2s. 6d. stamp, between & deft., for the sale of a lease, concluded with the following clause, signed by both parties: "Plff. does, at the same time & place, lend to deft. £81 in cash, to be repaid by instalments":—*Held*: not a promissory note, & the stamp was sufficient.—**MITCHELL v. WESTOVER** (1850), 15 L. T. O. S. 113; 14 Jur. 816.

**3156.**—*A document in the following form*: "Borrowed, this day, of H. £100 for 1 or 2 months: cheque, £100 on the N. bank. D."—*Held*: to be a mere acknowledgment, & not to require a stamp as a promissory note.—**HYNE v. DEWDNEY** (1852), 21 L. J. Q. B. 278; *sub nom.* **HYNE v. DEWDNEY**, 19 L. T. O. S. 61.

**3157.**—**Promise to pay.**—A written acknowledgment of a loan, accompanied by an undertaking to repay it, cannot be read in  
v. **Cox** (1848), 2 Car. & Kir. 702.

**3158.**—**On demand.**—An instrument in the following form: "Received of A £150, which I promise to pay on demand with interest," is a promissory note, & requires to be stamped as such.—**ASHBY v. ASHBY** (1829), 3 Moo. & P. 7 L. J. O. S. C. P. 221.

—*Held*. **Brecken v. Smith** (1834), 1 Ad. & El.

**3159.**—**Within two years.**—An instrument in the following form: "I have received the books, which, together with the cash in the settlement of your account, amounts to £80 7s., which sum I will pay you within two years from this date. T. To

—*An instrument in* "I owe you I promise to pay":—*Held*: to quire a stamp, as being a note.—**GAMBLE v.**

**3153 I.**—**On** document in Q. 212, which we will pay on demand," is a promissory note, & requires a stamp.—**DILLON v. EMERY** (1849), 3 Crav. & D. 266; 1 Leg. Rep. 336.—IR.

**3153 II.**—**When called for.**—The following document: "M., I am due you £200 which money I shall pay you when called for":—*Held*: a promissory note & improprietor for want of stamp.—**MILNE v. DONALDSON** (1852), 14 Dowl. (Ex. of Sess.), 619; 24 Sc. Jur. 541.—SCOT.

## PART XXV.—STAMP DUTIES.

W., & A." :—*Held* : to be a promissory note, & to require a stamp—*WHEATLEY v. WILLIAMS* (1830), 1 M. & W. 538; 2 Gale, 140; Tyr. & Gr. 1043; 5 L. J. Ex. 237; 130 E. R. 540.

*Jarvis v. Wilkins* (1841), 7 M. & W.

*r. Wright*  
12 C. R. 45

W

### 3160. ——— No definite time of

An instrument in the following form : —  
"borrowed of M., his sister, £14, in cash, as per loan, in promise of payment, of which I am truly thankful for, & shall never be forgotten by me. J." is a promissory note & requires a stamp. — *ELLIS v. MASON* (1839), 7 Dowl. 508; 2 Will. Woll. & H. 70; 8 L. J. Q. B. 106; 3 Jur. 406.

*Appl. Strivell v. Payne* (1840), 8 Dowl. 441  
*Jarvis v. Wilkins* (1841), 7 M. & W. 41  
*r. Steele* (1842), 16 L. J. Ex. 177.

### On day certain. —An

ment in the following form : "I, ———, Aug. 25, 1837. I, B., had £5 5s. for one month of my mother, A., from this date, to be paid to her by me. B." is a promissory note, & requires to be stamped to be admissible in evidence.

*r. PAYNE* (1840), 8 Dowl. 441; 4 Jur.

### 3162. ——— Addition of indemnity

—A document was signed in form : "I, G., owe you, E., £100 in of money lent, & will pay same, plus interest at the rate of 10 per cent. Oct. 7, 1907. Interest to Apr. 7 & Oct. 7. G. In

J., B. I, B., to E. the policy on the life of my ———, until the above sum is paid in full. B."

a the

promissory note, & did not to be  
—*BALCK v. PILCHER*, 25 T. L. R.

articled clerk, by ———, a turf

for time with plff. is  
of 507 ss. 6d. of  
plff. in of bets. A of  
t. if not m  
to him, not  
club, but  
h. after admitting his  
In consideration of  
& of the fact that I  
in

[plff.'s] forbearance to shall not be registered as  
by

to with  
ad ——— :—*Held* : the

in

you, &  
£100, &  
then of

3160 At

was not a promissory note within Stamp Act, 1891 (c. 39).—*HODGKINS v. SIMPSON* (1908), 23 T. L. R. 53.

*Annals*  
T. L.

*Ladbroke v. Buckland* (1908),

An

No definite time of  
in the following words : "I have  
which I have borrowed of you, &  
for the sum, with

N. C.

Ann  
Jur. :

6 E. R.

L.

H. L.

3165.

In following  
H.

a

a

B.

L. R.

H

### 3166. ——— Promise to pay at 5 per

The following document : "£170. B. £170 for value received, for to pay at the rate of 5 per cent date. A." :—*Held* : not to require a

as a  
, 10

& W. 605; 16 L. J. Ex. 177; 11 Jur. 806;  
R. 1857.

An acknowledgment of a debt, with a promise to pay interest, in the following terms : "This is to certify that I  
to A.  
T."

S. SMITH  
, 1

of  
P. 530, N. P.

4, sub-sect. 1

in Part XXI.

### 3168. Instrument not undertaking to

A written instrument : the  
D. v. V. In  
further

that I will pay unto D. £3 5s. of a  
from this day, until the w ml  
due from J. & T. V. to  
for same  
attested, &  
to

It is

by J. V. & T. V. to D. on Mar. 9, 1840, but an  
beal  
with

not

10 M. & W.

587;

16 L. Ex. 31; 8 L. T. O. 8.  
11;

E. R.

### 3169. Document admitting receipt of At interest.

The  
14 of R.

2

I have

sum 1

2 of







of  
[1.]

was not a perfect bill at the time the acceptance was written upon it, & the old stamp was insufficient. — *ABRAHAM v. SKINNER* (1840), 12 Ad. & El. 763; 4 Per. & Dav. 358; 10 L. J. Q. B. 5 Jur. 97; 113 E. R.

#### SUB-SECT. 2. — ON MAKING OF PROMISSORY NOTE.

**3181. Note payable to bearer—Generally.]—**A promissory note for £40, payable to bearer generally, & in law, payable on demand, is within the first class of promissory notes in Stamp Act, 1815 (c. 184), sched., part 1, & requires a 5s. stamp. *WHITLOCK v. UNDERWOOD* (1823), 2 B. & C. 157; 3 Dow. & Ry. K. B. 350; 1 L. J. O. S. K. B. 251; 107 E. R. 342.

**3182. — On demand.]—**A promissory note was in the following form: "We promise to pay the bearer £50 on demand for value received of M." & was stamped with a 3s. 6d. stamp:—  
It was wrongly stamped, the proper stamp 5s. as being payable "to bearer." — *ESCHITT v. MASON* (1852), 10 L. T. O. S. 275, N. P.

**3183. — With interest.]—**A promissory note for £11 10s., made payable "on to the bearer, with interest, for value" requires a 2s. stamp by Stamp Act, 1815, sched., part 1. — *EAST v. —* (1828), 2 Man. & Ry. K. B. 8.

**3184. Note payable to A.]—**A promissory note to A. generally is not one payable to on demand, & re-issuable, within the first of notes described in Stamp Act, 1815, part 1, but a note payable otherwise than to bearer on demand, not re-issuable, within 2, & such a note for £100 requires a stamp of 3s. 6d. only. — *CHERTHAM v. BUTLER* (1833), 5 B. & Ad. 837; 2 Nev. & M. K. B. 453; 3 L. J. K. B. 9; 110 E. R. 1000.

*Dixon v. Chambers* (1835), 1 Cr. M. & R. r. Siddel (1837), 2 Nev. & P. K. B. 78.

**3185. — On demand.]—**A promissory for £11, payable to A. on demand, is a note payable to bearer on demand, within Stamp Act, 1815, & requires a stamp of 2s. *KEATES v. WHILDON* (1828), 8 B. & C. 7; 6 L. J. O. S. K. B. 220; 108 E. R. 945.

*Went v. Whitaker* (1829), 3 Moo. & P. v. Whitaker (1829), 9 B. & C. 409; *Chertham* Ad. 837. That decision cannot

M. & R.

doubted (1. . . . . )  
will find that that case has been

note for payment of £20 to A. on  
lawful interest till payment, for  
— *Held*: a note of the second  
in Stamp Act, 1815, viz., payable  
wise than to bearer within 2 months after date,

XXV. SECT. 2, SUB-SECT. 2.  
1. Note payable on demand—No  
demand till after two months.]—A pro-  
missory note payable on demand having

requires value for a note payable on  
demand, but no demand having been  
made till after 2 months:—*Held*: the

only a 1s. 6d. stamp necessary.—*DIXON v. CHAMBERS* (1835), 1 Cr. M. & R. 845; 1 Gale, 14; 5 Tyr. 502; 149 E. R. 1322.

**3187. — Or order on demand.]—**A promissory note, payable to A. or order, on demand, is within the second class of notes mentioned in Stamp Act, 1815, sched., being a note payable in another manner than to bearer on demand, & not exceeding 2 months after date.—*MOYSE v. WHITAKER* (1829), 9 B. & C. 409; *Dan. & Ll.* 216; 7 L. J. O. S. K. B. 228; 109 E. R. 152.

— *Reid*. *Dixon v. Chambers* (1835), Gale, 14. *Mentd.* *Vallance v. Siddel* (1837), 6 Ad. & El.

**3188. — — — — —.]—**A promissory note payable to A. or order, on demand, is not a note payable to the bearer on demand, & is within the second class of notes in Stamp Act, 1815, sched., which are chargeable with the lower duty.—*Re RASTALL. Ex p. ROBINSON* (1832), 1 Deac. & Ch. 275. Ct. of R.

**3189. — — — — — With interest.]—**An instrument in the following words: "On demand we jointly & severally promise to pay A., or order, £100 with lawful interest for same, from the date hereof," requires only a promissory note stamp of 3s. 6d., as it is distinguishable from a note payable to bearer, on demand, which may be re-issued after payment.—*ARMITAGE v. BERRY* (1829), 5 Bing. 501; 3 Moo. & P. 211; 7 L. J. O. S. C. P. 229; 130 E. R. 1155.

**3190. Note payable to own order—Indorsement in blank.]—**A declaration alleged that deft. made his promissory note in writing, & thereby promised to pay to the bearer thereof £150, 2 months after date, & delivered the note to K., who thereby became the bearer thereof, & who indorsed & delivered it to plff., who thereby became the bearer thereof. At the trial plff. produced in evidence a note payable to deft.'s own order & indorsed by him in blank, & afterwards indorsed by K. The note bore a 4s. 6d. stamp:—*Held*: though until indorsement the note was an incomplete instrument, upon which no right to sue could exist, yet the effect of the indorsement was to render it a valid promissory note payable to bearer, & it was properly described in the declaration, & properly stamped.—*HOOPER v. WILLIAMS* (1848), 2 Exch. 18; 17 L. J. Ex. 315; 9 L. T. O. S. 80; 12 Jur. 270; 154 E. R. 385.

— *Reid*. *Winton* C. R. v. Barrets (1849), 2 Car. Klr. 7.

**Note payable at sight—Or on ———.]**  
A promissory note payable at sight requires an *ad valorem* stamp, as it comes within the words "promissory note of any kind whatsoever" in Stamp Act, 1891 (c. 39), sched. *Semble*: as a promissory note comes within the definition of "bill of exchange" in s. 32, it may also, if payable on demand or at sight, in addition to the *ad valorem* duty, require to be stamped with a 1d. stamp as being a "bill of exchange payable on demand or at sight."—*OERRINGER v. COME*, [1891] 1 K. B. 582; 7 L. J. K. B. 299; 98 L. T. 24 T. L. R.

a legal instrument  
demand of pa  
Barratt



**3192. Note payable two months after — Distinction between date & sight.]—A**  
 note, payable 2 months  
 to  
 more than 60 days after sight, or 2 months after  
 , date & sight not being in this case synony-  
 —**STURDY v. HENDERSON** (1821), 4 B. & Ald.  
 106 E. R.

**3193. Amount chargeable—Whole duty imposed Act.]—Where the whole of the stamp duty is**  
 used by one Act of Parliament, a  
 instrument, if *ad valorem*, is sufficient.  
 —**C. SHARLAND** (1795), 1 Esp. 292, N.

**3194. — Note for £45—To satisfy different**  
 of £45 is 1s. 6d., composed of three different sums  
 under of  
 but such a note on a 2s. stamp  
 of three different sums applicable to  
 funds, though in larger proportions to  
 than required: *Held*: valid. —**TAYLOR**  
 , 2 East, 414; 102 E. R. 427.

— **Whether interest included.]—A pro-**  
 note for the payment of £30 at 3 months  
 with interest from  
 to a note  
 —**ING** (1821), 4 B. & Ald. 264; 100  
 E.

146. *in re Brass* v. *Ad. & Kl.* 4 Tyr.

— **A promissory note for**  
 £200, with lawful interest reserved from a day  
 prior to the date, requires a stamp applicable to  
 a note for £200 only. —**WILLIS v. NIXON** (1834),  
 4 Tyr. 726.

**3197. — Foreign treasury note—Note also**  
 marketable security. —A gold coupon treasury  
 note of a foreign govt., in which there was an  
 acknowledgment of indebtedness for the sum  
 mentioned therein, & a promise to pay same to  
 on the date specified, or before that date  
 notice given, together with interest thereon:  
 not only a promissory note, but also a  
 security within Stamp Act, 1801  
 (c. 39), & liable in the higher rate of duty payable

[**INLAND REVENUE COMRA.**, [1906] A. C. 92; 77  
 L. J. K. B. 302; 98 L. T. 286; 24 T. L. R. 257;  
 52 Sol. Jo. 222, H. L.]

*l. ante.*

**3198. —** written  
 Act, 1797 (c. —A  
 drawn  
 remains  
 upon a of equal value with that  
*Held*:  
 in law. —**CHAMBERLAIN v. POMER**  
 P. N. R. 30; 127 E. R. 368

& several for repayment

& concerned in a joint undertaking, for the  
 of securing repayment of a loan of money,  
 & one of the parties signed it some days after the  
 who borrowed the money: —*Held*: the  
 did not require an additional stamp, if the

signature was put the was  
 if  
 to sign e advance of the signed  
 it White  
 till afterwards.  
 (1832), 2 Deac. & Ch. 334, C. of

### 3.—EFFECT OF ALTERATION, RE-ISSUE, INDORSEMENT, ETC., OF INSTRUMENT.

1. or

XIV.

**3200. Alteration—General rule.]**  
 only alteration that may be made in a bill of  
 exchange, without a fresh stamp, is  
 in the terms of it is rectified before it gets  
 into the  
 1 Camp. 7

*v. MARTIN* (1808), 6 East, 190.  
*Held*. *Prince v. Nicholson* (1814), 1

70.

**3201. Alteration of date or time of**  
**With assent of acceptor—Before negotiation.]**  
 A bill of exchange was drawn on a proper  
 dated Sept. 2, payable 21 days after date. It  
 afterwards altered & made payable 61 days  
 date, & on Sept. 30 was again altered to 21  
 after date, & the date was brought forward to  
 Sept. 14: *Held*: this was a  
 from the first, & required a new  
 the alterations were made with the consent of the  
 before the bill was  
*v. NICHOI.* (1794), 5 Term Rep. 537; 101 E. R.

Add.

**3202. —** A bill of  
 on . 1, at 2 months, by  
 of the drawer, &  
 by H. as a security for a

A. for 2 forward the without  
 by A of  
 in the term to the bill,  
 which to

15  
 E. R.

of a bill in of  
 its by is  
 a

5 L. J. Q.

Without drawer's  
 to B., drew a bill of  
 to B. 2 months after  
 of the bill by H. to C.  
 the  
 with A.

any  
 B. not  
 for want of a new stamp. *Held*: If A. had  
 assented to the alteration, a

etc., of  
[ 2.]

**3205. — With assent of drawer—On presentment for acceptance.**—A. drew a bill of exchange upon B., payable at 3 months, for a debt due from B. to A. On the delivery of the bill to B. for acceptance B. requested that 4 months might be substituted for 3, & afterwards by the assent of A., the alteration was made:—*Held*: a new stamp was not requisite.—**KENNERLEY v. NASH** (1842), 1 Stark. 452, N. P.

*Mentd.* Jones v. Jones (1835), 3 Tyr.

**3206. — With assent of drawer & acceptor.**—A bill of exchange was drawn by mistake, as dated on the corresponding day of the preceding month, instead of the day when drawn, & carried by the payee to debt. for acceptance, who accepted it, noticing the mistake. Afterwards the payee, upon communication with the drawer, altered the date to the day when drawn, & acquainted debt. with what he had done, who approved same:—*Held*: a new stamp was not required on account of the alteration.—**JACOB v. HART** (1817), 6 M. & S. 142; 105 E. R.

**3207. — After negotiation—By exchange of acceptances.**—A. & B. having exchanged their acceptance of bills drawn by each on the other at so many days date:—*Held*: the delivery of the respective bills for acceptance, & redelivery of same by the acceptors to the respective drawers, was a negotiation of the bills, & such bills could not, after they had been so exchanged for valuable consideration for 20 days, be post-dated without a new stamp, as upon new bills, although during all that time each had remained in the hands of the original drawer.—**CARDWELL v. MARTIN** (1808), 103 E. R.

& Ald

**Before issue—With assent of acceptor But not of drawer & first indorser.**—Three as drawer, acceptor, & first indorser, in an accommodation bill, & it was afterwards for value to J. Previously to its issue, its date had been altered:—*Held*: having assented to the alteration when he was informed of it, it was no answer to an action on the bill against him, that the bill had been so altered without the consent of the drawer & first indorser, & a fresh stamp was not necessary in consequence of such alteration, the bill having been altered before it was issued in

H. & Ald. 674; 1 Dow. & Ry. K. B. 332; 1 R. 1337.

L. 1.

**3209. Alteration of amount—Before issue.**—accepted a bill of exchange for £500 for the accommodation of the drawer a stamp sufficient to cover £4,000. The bill

bill the fraudulently  
being a 3 before the  
also word E wide for  
the words  
being at

of the second line, & the word "thousand" being at the beginning of the third line, there being sufficient room in the bill as drawn for such interpolation. He thus altered the bill into one for £3,500, & in that state he negotiated it. When debt. signed the bill there was nothing to call his attention to the amount of the stamp, & the bill appeared to be drawn in the ordinary form, though in such a shape as to make alteration possible without detection:—*Held*: as the bill had not been "issued" for stamp purposes at the time of its alteration, it did not become a new instrument requiring a fresh stamp.—**SCHOLFIELD v. LONDESBOROUGH (EARL)**, [1894] 2 Q. B. 660; 63 L. J. Q. B. 649; 71 L. T. 86; 10 T. L. R. 518; 38 Sol. Jo. 618; 10 R. 376; *affd.* without touching this point, [1895] 1 Q. B. 536, C. A.; [1896] A. C. 514, H. L.

*Mentd.* Union Credit Bank v. Mersey & Harbour Board, [1890] 2 Q. B. 205; Wise v. (1901), 71 L. J. K. B. 163; Farquharson v. King, [A. C. 325; Herdman v. Wheeler, [1902] 1 K. B. 361; Bell v. Marsh, [1903] 1 Ch. 528; Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49; Colonial Bank of Australasia v. Marshall, [1906] A. C. 559; Kepitigalla Rubber Estates v. National Bank of India, [1909] 2 K. B. 1010; Morrison v. London County & Westminster Bank (1913), 29 T. L. R. 342; London Joint Stock Bank v. K Arthur, [1918] A. C. 777.

**3210. Alteration of place of payment—By acceptor.**—An alteration of a bill of exchange by the acceptor, by making it payable at the house of another person instead of at his own residence, is not such a material alteration as to render a new stamp necessary.—**WALTER v. CUBLEY** (1833), 2 Cr. & M. 151; 4 Tyr. 87; 3 L. J. Ex. 2; 149 E. R. 711.

**3211. — Before negotiation.**—A bill of exchange was carried by the payee to debt. for acceptance, who accepted it. Before the bill was negotiated, debt., at the request of the payee, that he would make it payable in London, added to his acceptance the words, "payable at A., Saint Mary Axe, London":—*Held*: a new stamp was not required on account of the alteration.—**JACOB v. HART** (1817), 6 M. & S. 142; 105 E. R. 1106.

**3212. Insertion of words "or order"**—By drawer with consent of parties—After negotiation.]—Where a bill of exchange was put into circulation by indorsement, though it wanted the words "or order":—*Held*: the insertion of those words by the drawer, with the consent of the parties, did not make a new stamp necessary.—**KERSHAW v. COX** (1800), 3 Esp. 246, N. P.

*Annotat. as—Consd.* Knill v. Williams (1817), 4 Cole.

11 Ad. & El. 31. *Mentd.* Tidmarsh v. Grover Hall v. Fuller (1826), 8 Dow. & Ry. K. B. House (1826), 2 C. &

v. Roberts 22 W. R. 402.

**3213. Accommodation bill drawn payable to blank or order—Insertion of payee's name after acceptance.**—If an accommodation bill be drawn payable to blank or order, & after acceptance the name of A. be inserted in the blank, the bill is not vitiated, & it may be sued upon without any fresh stamp.—**ATWOOD v. GRIFFIN** (1842), 2 C. & P. 368; *sub nom.* **ATTWOOD v. GRIFFIN**, Ry. & M. 425, N. P.

*v. Case* (1876), 34 L. T. 64.

**3214. — of accommodation bill—At issue.**—Declaration on a bill of exchange, by

# PART XXV.—STAMP DUTIES.

that the acceptance was for the accommodation of the drawer, & without any consideration, that before the indorsement to pltf. the drawer negotiated the bill for his own use, & paid it when due, whereupon it was \_\_\_\_\_ to him, & after it was due, the drawer indorsed it to pltf. without its being restamped, or payment of any duty in respect of the re-issuing, & that pltf. before & at the time of the indorsement to him had notice of the premises:—*Held*: payment by an accommodation drawer being equivalent to payment by an acceptor, the bill when re-issued was in law a new bill, & required a fresh stamp.—*LAZARUS v. COWIE* (1842), 3 Q. B. 459; 2 Gal. & Dav. 487; 11 L. J. Q. B. 310; 6 Jur. 854; 111 E. R. 588.

*Annotations*:—*Consd.* *Jewell v. Parr* (1853), 13 C. B. 909. *Mentd.* *Parr v. Jewell* (1853), 16 C. B. 684; *Cook v. Lister* (1863), 13 C. B. N. S. 543; *Re Overend, Gurney, & Co.* (1866), L. R. 6 Eq. 344.

**3215. — After maturity—On behalf of acceptor.**—A party paying an accommodation bill, after maturity, on behalf of the acceptor, may bring an action against the drawer, without having the bill restamped.—*THOMAS v. FENTON* (1817), 2 Saund. & C. 68; 5 Dow. & L. 28; 16 L. J. Q. B. 362; 11 Jur. 633.

*Annotation*:—*Consd.* *Jones v. Broadhurst* (1850), D.C. R. 171.

**3216. On indorsement—Indorsement by defendant & indorsement by plaintiff.**—The \_\_\_\_\_ of a bill of exchange indorsed it \_\_\_\_\_ to \_\_\_\_\_ & immediately after the special \_\_\_\_\_ pltf. i

it:—*Held*: deft.'s \_\_\_\_\_ a new drawing by deft., but a \_\_\_\_\_ was not necessary.—*PENNY v. INNES* (18 \_\_\_\_\_), 1 Cr. M. & R. 439; 5 Tyr. 107; 4 L. J. Ex. 12 \_\_\_\_\_ E. R. 1

—*Mentd.*

J. P.

## XIV.

**Alteration before completion—Before all makers of note had signed note.**—The third maker of a \_\_\_\_\_ assory note had, \_\_\_\_\_ had \_\_\_\_\_ it \_\_\_\_\_ of \_\_\_\_\_ had \_\_\_\_\_

was requisite. *WRIGHT* (1842), 1 Dow. N. S. 802

**Alteration before issue—By consent of all \_\_\_\_\_ ing made & signed a \_\_\_\_\_ it to a third person, the \_\_\_\_\_ but before it was given to the payee it \_\_\_\_\_ e consent of all parties: \_\_\_\_\_ it to the third person was not an \_\_\_\_\_ of it, & \_\_\_\_\_ did not require a \_\_\_\_\_**

## SECT. 3.

was \_\_\_\_\_ of all \_\_\_\_\_ to the \_\_\_\_\_ that it was not \_\_\_\_\_ the \_\_\_\_\_

N. P.

374.

**3219. Alteration after execution—Banker's deposit note.**—An \_\_\_\_\_ in the terms of \_\_\_\_\_

\_\_\_\_\_ unless \_\_\_\_\_ to \_\_\_\_\_ or supply some \_\_\_\_\_ will render new \_\_\_\_\_ up necessary, in or \_\_\_\_\_ in evidence as a security, or to sustain an \_\_\_\_\_ founded upon it.—*SUTTON v. TOOMER* (1827), 7 B. & C. 416; 1 Man. & Ry. K. R. \_\_\_\_\_ 6 L. J. O. S. K. R. 49; 108 E. R. 778.

M.

**3220. Alteration after note paid away—With consent of parties.**—If a promissory note be \_\_\_\_\_ by consent of parties at any time after it once been paid away, there must be a fresh \_\_\_\_\_ *WILSON v. JUSTICE* (1790), Peake, Add. \_\_\_\_\_ N. P.

**3221. Alteration of statement of With consent of parties.**—A \_\_\_\_\_ for \_\_\_\_\_ to pltf. or \_\_\_\_\_ ex-

the \_\_\_\_\_ day \_\_\_\_\_ of one \_\_\_\_\_ by \_\_\_\_\_ & trade of K. \_\_\_\_\_ requires a new stamp, such words being material, & not having been originally intended to be inserted & omitted by mistake. *KNILL v. WILLIAMS* (1809), 10 East, 431; 103 E. R. 839.

*Annotations*:—*Exptd.* *Cole v. Parkin* (1810), 12 East, 431. *Dntd.* *Wright v. Kingshaw* (1842), 6 Jur. 857. *Mentd.* *Hall v. Fuller* (1826), 5 Dow. & Ry. K. R. 481; *London & Provincial Bank v. Roberts* (1874), 22 W. R. 404; *Bullell v. Bank of England* (1887), 6 Q. B. 113.

**3222. Subsequent addition of signature to Previous agreement as to signatures.**—A \_\_\_\_\_ de is signed by A. & \_\_\_\_\_ by B., whilst in the hands of the payee \_\_\_\_\_ of B. is in \_\_\_\_\_

note, it will be void, without an \_\_\_\_\_ stamp. *CLERK v. \_\_\_\_\_* (1844), 1 P. 474, N. P.

19 \_\_\_\_\_ 1 J \_\_\_\_\_ 1 B

by \_\_\_\_\_

that the \_\_\_\_\_

parties \_\_\_\_\_ the three, \_\_\_\_\_ 16 L. T. O. S. 149.

**3224. With consent of all parties.**—Pltf. \_\_\_\_\_ or of a person \_\_\_\_\_ At the trial the \_\_\_\_\_ it \_\_\_\_\_ maker, which, with \_\_\_\_\_ of all \_\_\_\_\_ in order to \_\_\_\_\_

most \_\_\_\_\_ made \_\_\_\_\_ MILL \_\_\_\_\_ 708.

CAN.



3.—*Effect of alteration etc., of instrument: Sub-sect. 2. Sect. 4: sect. 1.*

placed on the note, he received an I.O.U. by debt. for the amount of the note:—*Held*: whether or not the note was void for want of a fresh stamp, & might be objected to under a plea of *non acceptavit* (as to which *qu.*), it was admissible in evidence to show in respect of what the I.O.U. was given. *GOULD v. COOMBS* (1845), 1 C. B. 543; 14 L. J. C. P. 175; 5 L. T. O. S. 93; 9 Jur. 494; 135 E. R. 653.

*Annotation:—Mentd.* *Buck v. Hurst & Bailey* L. R. 1 C. P. 2

**3225. Words "or order" added—With consent of maker of note.**—Deft. gave plff. a promissory note, without the words "or order." Six months afterwards plff. mentioned the omission to deft., who answered that the omission was his, deft.'s own, & consented that the words should be inserted, which was done. The note was not re-stamped. The note having been declared on, as altered, & issue joined on a plea denying the making of the note:—*Held*: on the above evidence, the jury were justified in finding for plff., as it appeared that the alteration was made only in furtherance of the original intention of the parties, & to correct a mistake, in which case no new stamp was requisite. *BYRON v. THOMPSON* (1839), 11 Ad. & El. 31; 3 Per. & Dav. 71; 9 L. J. Q. B. 26; 113 E. R. 324; *sub nom.* *VIAL v. THOMPSON*, 3 Jur. 1121.

**3226. Note altered into bill—By maker & indorser at request of payee—Before negotiation.**—A. & B. for a debt due to C. agreed to give him a bill of to be drawn by A. & accepted by B. they sent him a promissory note made by one & indorsed by the other, which he immediately returned to be altered into a bill of exchange according to the agreement:—*Held*: the instrument so altered was a valid bill of without a fresh stamp, as it had not originated in the shape of a promissory note, & the alteration might be considered as the mere correction of a mistake. *WEBBER v. MADDOCKS* (1811), 3 Camp. 1, N. P.

*Annotation:—Mentd.* *Bradley v. Bardsley* (1845), 15 L. J. Ex. 118.

**3227. Indorsement or memorandum—That note taken as security.**—Upon an instrument in common form of a joint & several promissory signed by three persons, there was an written at the time of signing it, stating that the note was taken as a security for all balances to the amount of the sum within specified which one of the three might happen to owe to the payee, that the note should be in force 6 months, & that no money should be liable to be called for sooner in any case:—*Held*: in an action against one of the

as a

on demand, or at 6 months after date, as b these parties the instr was an & must be stamped & *LEEDS v. LANCASHIRE* (1809), 2 Camp. 205, N. P.

*Annotations:—Bell.* *Clarke v. Fernald* (1831), 3 R. 649; *Bolton v. Dugdale* (1832), 4 R. & Ad. 619; *Crick* (1834), 1 Gale, 441; *Davies v. Wilkinson* (18 Ad. & El. 26; *Mafford v. Page* (1879), L. R. 5 Exch. 3)

**3228. — That deeds (security.)**—An instrument w

ssory note, & had been properly stamped as such before making, contained in the body of it a memorandum that the maker deposited certain title deeds with the payee as a collateral security. After it was made, it was stamped with a proper mtge. stamp on payment of the penalty:—*Held*: (1) this was an assignable promissory note, & it might be sued on by an indorsee, though the mtge. stamp was put on after the making, & though there was no assignment stamp; (2) if an instrument containing a mtge. were also a promissory note, it might still be stamped with a mtge. stamp, after the execution, provided it had a promissory note stamp on it at the time it was executed.—*WISE v. CHARLTON* (1836), 4 Ad. & El. 786; 2 Har. & W. 49; 6 Nev. & M. K. B. 304; 6 L. J. K. B. 80; 111 E. R. 979.

—*Reid.* *Fancourt v. Thorn* (1846), 10 Jur. 639. *Mentd.* *Storm v. Stirling* (1854), 3 E. & B. 832.

**3229. — — — — —**—T. made a note in the following terms: "On demand I promise to pay H., or order, £500, for value received, with interest, at the rate," etc., "& I have lodged with H. the counterpart leases, signed by D.," etc., "for ground let by me to them respectively, as a collateral security for the £500 & interest. £500":—*Held*: this might be sued on as a promissory note, & read in evidence, though stamped as a note only.—*FANCOURT v. THORNE* (1846), 9 Q. B. 312; 1 New Pract. Cas. 440; 15 L. J. Q. B. 344; 7 L. T. O. S. 256; 10 Jur. 639; 115 E. R. 1293.

**3230. — As to assignment of note.**—A promissory note was indorsed by plff. as follows: "I hereby assign this draft & all benefit of the money secured thereby, to J., of, etc.; & order the within-named T., the maker of the note, to pay him the amount thereof, & all interest in respect thereof, R.":—*Held*: the indorsement did not require a stamp. It is no agreement; it amounts to nothing more than an ordinary indorsement of the note, but it is in a very elaborate form (*GURNEY, B.*).—*RICHARDS v. FRANKUM* (1840), 9 C. & P. 221, N. P.; *subsequent procedi* 6 M. & W. 420.

**3231. — As to calculation of** A., B., & C. made a joint & several note for £100, payable to plffs., trustees of a banking co., or their order, on demand. A memorandum, indorsed on the note at the same time, signed by A., B., & C., stated that the note was given to secure floating advances made by the co. to A., from the respective times when such advances had been or might be made, together with commission, etc., not exceeding in the whole, at any one time, the sum of £100. In an by the payees of the note against C.:—*Held*: memorandum indorsed on the note could not be read in evidence without an agreement stamp.—*CHOLMELEY v. DARLEY* (1845), 14 M. & W. 344; 14 L. J. Ex. 328; 5 L. T. O. S. 267; 153 E. R.

**After death of one of two alternative payees—Whether intention to make new note.**—L., in 1846, promised to pay, 3 months after date, to B. or to C., his wife, \$500. B. died in leaving C. surviving. There was an indorsement on the note in L.'s handwriting of his name & year 1866. C. died in 1868:—*Held*: it was not intended to make a new note.

was urged that that alteration disclosed an

intention to make a new promissory note, & not to acknowledge an existing one, & that the case is one not of old note & acknowledgment, but of new note, bad for want of a stamp. Considering that the original signature is not cancelled; that the note is still left as an alternative promise to pay to two persons, one of whom was dead, & that the new signature is written on the back of & across the note, I think it the better conclusion that it was not really intended to make a new note in the strict sense of the word, but simply to acknowledge an existing one (WICKENS, V.C.).—*BOURDIN v. GREENWOOD* (1871), L. R. 13 Eq. 281; 41 L. J. Ch. 73; 25 L. T. 782; 20 W. R. 166.

**3233.** — As to giving time—Joint note by principal debtor & surety.—A document, in the form of a joint & several promissory note by a principal debtor & a surety for £5 payable by instalments, with the proviso that, in case of default in payment of any one of the instalments, the whole amount remaining unpaid should become due, concluded with the following clause: "Time may be given to either without the consent of the other & without prejudice to the rights of the holders to proceed against either party, notwithstanding time may be given to another." *Held*: the document was not by reason of such clause agreement requiring to be stamped as an instrument, but a good promissory note. *YATES v. EVANS* (1892), 61 L. J. Q. B. 446; 66 L. T. 532; 56 J. P. 565; 36 Sol. Jo. 274, D. C.

*Mentd.* *Kirkwood v. Carroll* (1907) 1 K. B. 531

#### SECT. 4. —EFFECT OF ABSENCE OR INSUFFICIENCY OF STAMP.

##### 1. —HOW AND WHEN ABSENCE

**3234.** Power of court.—To inquire as to time of stamping.—The ct. may inquire as to the time when a stamp not originally affixed to the instrument was in fact affixed thereto. *GREEN v. DAVIES* (1826), 4 B. & C. 107; 6 Dow. & Ry. K. B. 300; 3 L. J. O. S. K. B. 185; 107 E. R. 1046.

*Abon.* (1871), 5 L. J. O. S. K. B. 16.

*Ashling v. Boon*, (1891) 1 Ch. 568

— To direct proper note to be made—  
Before execution on bond for which note partly

#### PART XXV. SECT. 4, SUB-SECT.

by plff. or  
not

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whatsoever, & the judge  
discovers that the instrument is not  
duly stamped, the party relying upon  
it must fail.—*NICHOLLS v. CHAMBERLAIN*  
(1866), 17 V. L. R. 645.—*AUS.*

*Held*:  
although there was no plea of in-  
sufficiency or illegal stamping, yet, as  
evidence of illegal stamping had been  
received at the trial without objection,  
the question of the legality of the  
stamping was for the consideration of  
the ct.—*WATKINS v. MCCULLOUGH* (1876),  
7 R. & C. 74.—*CAN.*

of  
BANK OF A  
I C. A.

*Held*

consideration.)—Where plff. had  
sory note without a stamp, the ct. directed a  
to be made, conformable to the

was  
take out execution on a bond, for which the note  
was part of the consideration.—*AYLETT v.*  
(1792), 1 Anst. 45; 145 E. R. 795.

& Ry. K. B.

**3236.** Power of commissioners.—To add stamp  
—After issue of insufficiently stamped bill.)—  
In

by an extrin. on a promissory note  
e in 1814, & payable to her testator,  
money had, etc., it appeared on the pro-  
duction of the note that it had a 3d. receipt stamp  
& a £1 agreement stamp, & there was indorsed upon  
it a receipt for a penalty of £5 & £1 duty. The  
stamp for such a note, in 1814, was a 3s.

*Held*: as it appeared upon the face of  
that it had been issued without having  
it a stamp equal in amount to that  
by law, the comrs. had no power after  
it had been issued to affix to it another stamp, &  
it was not receivable in evidence, either in or  
of the court for the promissory note or of the  
counts.—*GREEN v. DAVIES* (1826), 4 B. & C.  
107; 6 Dow. & Ry. K. B. 300; 3 L. J. O. S. K. B.  
107 E. R.

*Held*.  
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a C.

11  
B. 16.

**3237.** Bill properly stamped when produced at  
trial.—It is no defence to an action at the suit of  
or bill of ex-  
that the bill was not stamped at the time  
of making it, if it has a proper stamp when  
at the trial. *WRIGHT v. RILEY*  
, 230.

*Dictd.* *Green v. Davies* (1826), 4 B. & C.

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**3237 II.** — After issue of a con-  
mons on an unstamped note the holder  
caused it to be duly stamped before  
the Revenue officials:—*Held*: as the  
note was duly stamped when produced  
in ct. the fact that it was not so stamped  
when sued upon did not invalidate the  
action.—*WATKINS v. LLOYD* (1816),  
7 P. D. 145.—*S. AF.*

**3237 III.** — Absence of cancellation.)  
—Where a stamp is affixed to a pro-  
missory note by the proper person at  
the proper time, but the stamp is not  
cancelled, the note is stamped within  
Stamp Act.—*BANK OF NEW ZEALAND*  
*v. HARRISON* (1857), 6 N. Z. L. R. 16.—  
N.Z.

1. 4. — Effect of or insufficiency of stamp :  
2 & B.]

insertion of the words " & to be paid on or before Apr. 15, 1845 " :—*Held* : the plea afforded no answer to the declaration, as the stamp laws authorised the stamping of certain notes before the trial, & the plea did not negative all possibility of this being one of those cases. *Qu.* : whether the stamp laws can be pleaded in bar of an action on a promissory note or bill of exchange, but, at all events, they can only be so pleaded in cases where the instrument cannot be made good by being stamped before the trial.—*BRADLEY v. BARDSEY* (1845), 14 M. & W. 873 ; 3 Dow. & L. 470 ; 15 L. J. Ex. 115 ; 153 E. R. 730.

*Reid*, R. v. Mote Watts (1854), 23 L. J. M. C. 56.

**3239.** — [An instrument which, upon its requires a certain stamp is admissible in if it bears that stamp, although there are connected with it which, if inquired into, that it ought to have borne a different stamp.

— *AUSTIN v. BUNYARD* (1865), 6 B. & S. 687 ; 6 New Rep. 202 ; 34 L. J. Q. B. 217 ; 12 L. T. 452 ; 29 J. P. 620 ; 11 Jur. N. S. 871 ; 13 W. R. 773 ; 122 E. R. 1348.

*Annotation* :—*Folld*, Gatty v. Fry (1877), 2 Ex. D. 261.

**3240.** — Foreign bill.]—In an action on a foreign bill of exchange, the stamp required by Stamp Act, 1854 (c. 83), was upon the bill at the of the trial, but no evidence was given to that it was on the bill at the time it to plff. : *Held* : it must

to have been so, the contrary not having been shown by deft. — *BRADLAUGH v. DE RIN* (1868), L. R. 3 C. P. 280 ; 37 L. J. C. P. 110 ; 18 L. T. 904 ; 10 W. R. 1128 ; subsequent proceedings, L. R. 3 C. P. 538 ; (1870), L. R. 5 C. P. 473, Ex. Ch.

*Mentd.* *Marc v. Rouy* (1874), 31 L. T. 372.

bills generally, see Part XVIII.,

— Stamp Act, 1870 (c. 97).]—

the above Act the test of admissibility is whether the instrument appears, when tendered in evidence, to be sufficiently stamped.—*GATTY v. FRY* (1877), 2 Ex. D. 265 ; 46 L. J. Q. B. 605 ; 36 L. T. 182 ; 41 J. P. 184 ; 25 W. R. 305.

*Annotations* :—*Distd.* *Clarke v. Roche* (1877), 3 Q. B. D. 170. *Consd.* *Hitchcock v. Edwards* (1889), 60 L. T. 636. *Mentd.* *Royal Bank of Scotland v. Tottenham*, [1894] 2 Q. B. 715.

## 2.—HOW AND WHEN OBJECTION TO BE TAKEN.

**3242. Who may object—Party admitting hand-writing to bill.]**—A party, who admits his hand-writing to a bill of exchange, is not thereby precluded from objecting to the sufficiency of the stamp.—*VANE v. WHITTINGTON* (1843), 2 Dowl. N. S. 757 ; 7 Jur. 95.

**3243. How objection pleaded—Plea denying acceptance.]**—In an action on a bill of exchange, the sufficiency of the stamp is put in issue by a plea denying the acceptance, & the ct. will not allow a distinct plea that the stamp is insufficient.—*DAWSON v. MACDONALD* (1836), 2 M. & W. 26 ; 2 Gale, 215 ; 6 L. J. Ex. 10 ; 150 E. R. 654.

*ons* :—*Folld.* *Field v. Woods* (1837), 7 Ad. & El. 114 ; *Barnes v. Hodson* (1838), 1 Will. Woll. & H. 80. *Mentd.* *Maynard v. Consolidated Kent Collieries Corpn.*, [1903] 2 K. B. 121.

**3244. — General allegation insufficient.]**—To an action on a bill of exchange, a plea, that the bill was not duly stamped :—*Held* : ill.—*HAWARD v. SMITH* (1838), 4 Bing. N. C. 684 ; 1 Arn. 257 ; Scott, 438 ; 7 L. J. C. P. 294 ; 132 E. R.

*Distd.* *Lazarus v. Cowie* (1842), 3 Q. B.

**3245. Time for objecting—On production of bill.]**—In *assumpsit* on a contract collateral to a bill of exchange, in which were pleas denying the contract, & the indorsement of the bill :—*Held* : the bill must be produced, & the insufficiency of the stamp might be objected to.—*BARNES v. HODSON* (1838), 1 Will. Woll. & H. 80 ; 2 Jur. 349.

— *Plea* :—In an action on which at its making was not but which had been double before action, deft. denied the making of the note. At the trial the judge refused leave to allow a plea of insufficient stamping to be added :—*Held* : the judgment was right.—*CAUGHILL v. CLARKE* (1883), 3 Q. R. 369 ; 9 P. R. 471.—*CAN.*

after in note of deft.) estopped from denying its *BANK OF NOVA SCOTIA v.* (1871), 8 N. S. R. 438.—*CAN.*

ii. — [After in too late to object to of the stamps.—*LACE* (1871), 2 R. & C. C. L. T. 336.—*CAN.*

**3246 iii.** — Whether after ted a bill of of a charge of bearing

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his an ordinary action on the bill :—If the objection on the mp laws c not then be returned (1878), 6 W. Coll. 2

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**3246. — Whether after payment of money into court.]—**In an action on a bill of exchange, after payment of money into ct., debt. cannot object to the sufficiency of the stamp on which the bill is drawn.—**ISRAEL v. BENJAMIN** (1811), 3 Camp. 40, N. P.

*Notes:—***Dunn**, **Barnes v. Hodson** (1838), 1 Will. Woll. & H. 80. **Mentz**, **Wills v. Nott** (1834), 4 Tyr. 7. **y v. Walrond** (1837), 6 L. J. C. P. 290.

**3247. — Whether after judgment suffered by default—& execution of writ of inquiry.]—**Where t has been suffered by default on a pro- y note or a bill of exchange & a writ of inquiry is executed, it cannot be objected on the execution of the writ, that the instrument has no or an improper stamp. — **WATSON v. GLOVER** (1813), 12 L. J. C. P. 181; 7 Jur. 22.

**3248. Burden of proof—When shifted.]—**The burden of proving an instrument to be unstamped lies, in the first instance, on the party who objects to its production on the ground that it is unstamped. Where there is no evidence on either side it will be presumed to have been stamped. When once satisfactory evidence has been given that at a particular time the instrument was unstamped, there is an end of any presumption of law in favour of its having been stamped, the onus of proof is shifted, & the party who relies on the instrument must prove it to have been duly stamped. — **MARINE INVESTMENT CO. v. HAVESIDE** (1872), 1 L. R. 5 H. L. 624; 42 L. J. Ch. 173, H. L.

#### SUB-SECT. 3. — ADMISSIBILITY IN E

##### A. In Action on Instrument.

**3249. General rule.** — A upon a stamp of gr stamp required cannot be received in though the stamp were applicable to the of instrument. — 102 E. R. 22.

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#### XXV. SECT. 4, SUB-SECT. 1.

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*Green v. Davies* (1823), 4 B. & C. 23 (1829), 5 H. & N. 35.

**3250. —.]—**If a bill of exchange is wrongly stamped, it cannot be given in **C. MACDONALD** (1836), 2 M. & W. 26; 2 Gale, L. J. Ex. 10; 150 E. R. 654.

*Annotations:—***Feld**, **Field v. Woods** (183

114; **Barnes v. Hodson** (1838), 1 Will

**Held**, **Maynard v.** (1903) 2 K. B. 121.

**Receipt for interest—On back of un-stamped note—Whether admissible.]—**A

for interest on the back of a without a which cannot be given in evidence, is evidence to go to the jury, from which they may presume, that from the payment of so much for interest there was a principal sum in

121, N. P.

**3252. Action for interest on note.]—**Deft., who owed his with at 5 per In an action to a

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**3253. On count for money lent.** a I been given for produces in ct. was C.J. pe plff. to to on a for lent, by prov that

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**To prove** f on a note for a debt, the party may into or

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# 510 BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE

## 4. Effect of absence of stamp: 3, B

the debt for which the note is given, if the note has not the proper stamp so that it cannot be given in

245, N. P.

**3255.** ———.]—If a bill of exchange given in discharge of a debt is rendered inadmissible by being on an improper stamp, plff. may prove his original debt. *BROWN v. WATTS* (1808), 1 Taunt. 353; 127 E. R. 870.

*Annotations:* *Approved.* *Re Mowat, Ex p. Geddes* (1824), 1 Cl. & J. 114. *Reid.* *Fremant v. Ashley* (1853), 1 E. & B.

**3256. On count on account stated.**—A promissory note reciting that "deft. had been awarded to pay £500 to the representatives of J., & that he had paid him £100 in his lifetime, & thereby promised to pay his representatives £400 3 months after his death, pursuant to the award, first thereout any interest or money J. owe to deft. on any account," may be given in evidence in an action brought by the representative of J. against deft., on an account stated him & J., although it was improperly as a promissory note.—*BARLOW v. BROADHURST* (1820), 1 Moore, C. P. 471.

**3257.** ———.]—*Assumpsit* by plff. as indorsee of a bill of exchange for £57 10s., & upon an account stated, against deft. as acceptor. The bill was upon an insufficient stamp, & plff., in order to recover upon the account stated, produced two letters written by deft. after the dishonour of the bill. In the first, which was dated on the day the bill became due, & which was addressed "to the gentleman who calls with the bill," deft. expressed his regret that it was not in his power to take up the bill for £57 10s. In the second letter, which was in answer to one from plff.'s attorney, requiring payment of deft.'s acceptance in favour of T. for £57 10s., deft. said, that if he had had the money he should not have let his acceptance be dishonoured, & he proposed that T. should draw upon him in a month:—*Held*: the letters did not amount to an acknowledgment that the £57 10s. was due to plff., but merely that it was due to the person legally entitled to the bill, & it was necessary for plff. to prove an indorsement to the bill, & the bill, not being on a sufficient stamp, could not be at by the jury for the purpose

of stamp: that fact.—*JARDINE v. PAYNE* (1831), 1 B. & Ad. 663; 9 L. J. O. S. K. B. 129; 100 E. R. 933.

*Annotations:*—*Consd.* *Haigh v. Brooks* (1839), 10 Ad. & El. *Reid.* *Barnes v. Hodgson* (1838), 2 Jur. in *v. Ross* (1849), 2 H. L. Cas. 286. *v. Baker* (1838), 2 Jur. 1020.

**3258.** ——— & for goods sold.]—A declaration contained a count on a bill of exchange for £13 10s., for goods sold, & on an account stated. The particulars stated that the action was brought to recover the amount of the bill in the declaration mentioned. The bill, when produced, was found to have been altered, & was inadmissible in evidence without a fresh stamp:—*Held*: inasmuch as it was shown to have been originally given for the price of the goods, it was evidence on the count for goods sold, as well as on the account stated.—*FOSTER v. EMERY* (1843), 1 L. T. O. S. 147.

## C. In other Civil

**3259. For collateral purposes.**—*Held*: a draft on a London banker, purporting to be drawn in London, but actually drawn above ten miles from London, on unstamped paper, might be received in evidence for collateral purposes, though not for the purpose of recovering the money contained in it.—*R. v. POOLEY* (1801), 3 Bos. & P. 311; 2 Leach, 900; *Russ. & Ry.* 31; 127 E. R. 171.

— **What are.**—Although a promissory note without a stamp cannot be received in evidence as a security, or to prove the loan of money, it may be looked at by the jury with a view to ascertain a collateral fact, *e.g.*, that the maker was drunk when he wrote the note.—*Y v. FRASER* (1813), 3 Camp. 454, N. P.

*Consd.* *Ashling v. Boon*, (1891) 1 Ch. 568. *Reid.* *Jardine v. Payne* (1831), 1 B. & Ad. 663; *Williams v. Gerry* (1842), 10 Sl. & W. 296; *Smart v. Nokes* 6 Man. & G. 911.

**3261.** ———.]—Deft. in an action claimed to have made certain advances, & he tendered as evidence of one of the loans a promissory note for £40, which was stamped with a 1d. stamp only. Plff. objected that a promissory note stamped with a 1d. stamp only was not admissible as evidence of the receipt of the money. Deft. admitted that the document was a promissory note, & insufficiently stamped as such, but he contended that, although it could not be admitted as a promissory note, it ought to be admitted as evidence of the receipt of the money:—*Held*: (1) the receipt of the money

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NATH DRY (1896), L. R.  
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of the note:—*Held*: the suit  
ought on it the admission of its  
note by deft. did not avail plff., the  
document itself being inadmissible for  
want of a stamp.—*DAMODAR JAGAN-  
NATH v. ATMARAN BARAJI* (1885),  
1 L. R. 12 Bom. 443.—IND.

**3256 I. On** on  
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(1872), 9 N. S. R. 40.—CAN.  
**3256 II.** ———.]—*Held*: a

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necessary proof of the cause of action.  
*O'Keeffe v. Roche* (1821), 3 Fox.  
8, Jr. 129.—

L. To action by  
the exec. of A.  
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received the money, but pleaded that  
pursuer had no right to recover in  
respect that A. had made a donation  
of the loan to B. B. deposed that A.  
had sent her a bill which had been

PART XXV.

4, SUB-SECT.





*Secl. of absence or insufficiency of stamp:*  
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**PARMITER** (1861), 3 D. G. F. & J. 461; 30 L. J. Ch.  
; 3 L. T. 799; 45 E. R. 957, L. C.

*Reid. Re Hambrough's Estate, Hambrough v.*  
*U. (1909) 2 Ch. 629. Mentd. Re Rizzo, Ex D.*

**3270. To negative payment by bill.]**—In an action of debt for money lent, deft. pleaded never indebted & payment. Pltf. gave in evidence a memorandum, in which deft. admitted the debt, but the inference arising from the same memorandum was, that the debt had been paid by a bill of exchange, given at the time to pltf. by deft. :—  
: pltf. might, in order to rebut that inference, negative by anticipation the plea of payment, & in evidence the bill of exchange referred to, on an insufficient stamp. — **SMART v. NOKES**, 6 Man. & G. 911; 7 Scott, N. R. 786; 13 L. J. C. P. 79; 2 L. T. O. S. 310; 8 Jur. 44; 134 E. R. 1101; *subsequent proceedings*, 3 L. T. O. S.

*L. Gould v. Coombs (1845), 1 C. B. 543.*

**3271. To prove indebtedness—Debt & interest secured by note.]**—A debt secured by a promissory note, given in 1831, was revived in 1848. When due in 1834, debtor, by letter, asked that the interest might run on: *Held*: a memorandum written at the foot of the letter of 1834, though in the form of a promissory note & unstamped, might as evidence to show to what debt the in such letter referred. — **SPICKERNEILL v. (1854), Kay, 660; 2 Eq. Rep. 1103; 2 W. R. 638; 69 E. R. 285.**

*Re Mentd. Miller v. Borthwick (1865), 35 L. J. Ch. Gifford v. Burleigh (1898), 78 L. T. 264; Re Dixon, v. Dixon, (1900) 2 Ch. 561; Re Plumtree's Marriage, Underhill v. Plumtree, (1910) 1 Ch. 609; Pullan v.*

*Horner v. Rawle (1916), 61 Sol. Jo. 27.*

**3272. — Tender of duty & penalty.]**—Where a bill was filed for the administration of an estate, & in proof of a debt promissory notes insufficiently stamped were tendered in evidence, & on taken to the reception of them, the proper duty, with the penalty, under C. L. P. Act, 1854 (c. 125), s. 28, was tendered to the registrar: — *Held*: the notes could not be received, nor the deficient amount of duty, but, on the other evidence, pltf. had established his case & was entitled to the usual administration decree. — **STURBIN v. FISHER (1862), 7 L. T. 63; 9 Jur. N. S. 38.**

**3273. — Foreign bill.]**—J. was indebted to pltf., & was also a creditor of the S. & F. Co., Ltd., which was being wound up, & deft. was the official liquidator. J. signed the following document: "Isle of Man, July 15, 1865. On Aug. 1

next, please to pay to pltf., or order, £600, on account of money advanced by me to the S. & F. Co., Ltd. To deft., official liquidator of the co." The document, which was unstamped when produced at the trial of an action for money had & received, was sent by J. to pltf. in England, & they forwarded a copy to deft., who was also in England, requesting to know whether he would honour the order, & he replied he would when funds came into his hands about Aug. 15. Funds did come into his hands soon after that time, but owing to a dispute as to the amount remaining due to J. nothing was then paid, & after much correspondence, in which pltf. continually demanded payment of the order, but never parted with it, the action was brought:—*Held*: the order, being drawn in the Isle of Man, was a foreign bill for stamp purposes, & need not be stamped except as required by Stamp Act, 1854 (c. 83), ss. 3, 5, viz., when "presented for payment, indorsed, transferred, or otherwise negotiated in the United Kingdom," & as it had not been dealt with in any of those ways, it was admissible in evidence without a stamp.—**GRIFFIN v. WEATHERBY (1868), L. R. 3 Q. B. 753; 9 B. & S. 726, 37 L. J. Q. B. 280; 18 L. T. 881; 17 W. R. 8.**

*Annotation: Mentd. Greenway v. Atkinson (1881), W. R. 560*

#### *D. In Criminal*

**3274. To prove forgery.]**—In an indictment for forging a bill of exchange, the bill may be given in evidence, although not stamped pursuant to the stamp laws.—**R. v. HAWKESWOOD (1783), 1 Leach, 257; 2 East, P. C. 955.**

*Annotations: —Dtd. Whitwell v. Dimsdale (1792), Peake, 224. Fdld. R. v. Morton (1795), 1 Leach, 258, n. Consd. R. v. Gillson (1807), 1 Taunt. 95. Dtd. Scott v. Jones (1813), 4 Taunt. 865. Reid. R. v. Reculist (1796), 2 Leach, 703.*

**3275. S. P.—R. v. LEE (1784), 1 Leach, 258, n.**

**3276. S. P.—R. v. MOFFATT (1787), 1 431; 2 East, P. C. 954.**

*Annotations: —Dtd. R. v. Gade (1796), 2 Leach, 732. Reid. R. v. Pike (1838), 2 Mood. C. C. 70.*

**3277. S. P.—R. v. RECLIST (1796), 2 Leach, 703; 2 East, P. C. 956.**

*Annotations: —Consd. R. v. Pooley (1801), 2 Leach, 900. Reid. R. v. Aslett (1803), 2 Leach, 954. Mentd. R. v. Gillson (1807), 1 Taunt. 95.*

**3278. S. P.—R. v. MORTON (1795), 1 Leach, 258, n.**

#### *E. Effect of Decision as to Admissibility.*

**3279. Whether appeal lies from—Judge sitting without jury.]**—Where a judge, trying an action without a jury, rules that the stamp upon any document, e.g., a promissory note, is sufficient, or

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PART XXV. SECT. 4, SUB-SECT. 3.  
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